

STATE OF MICHIGAN
IN THE SUPREME COURT

SHARDA GARG,

Plaintiff-Appellee,

V

MACOMB COUNTY COMMUNITY
MENTAL HEALTH SERVICES, a
governmental agency of MACOMB
COUNTY,

Defendant-Appellant.

Supreme Court
No:

Court of Appeals
No.: 223829

Macomb County Circuit Court
No.: 95-3319 CK

**EXHIBITS TO APPLICATION FOR LEAVE TO APPEAL FOR DEFENDANT
MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES**

KITCH DRUTCHAS WAGNER
DENARDIS & VALITUTTI

By: SUSAN HEALY ZITTERMAN (P33392)
KAREN B. BERKERY (P38698)
Attorneys for Defendant
One Woodward Avenue, 10th Floor
Detroit, Michigan 48226
(313) 965-7905

KITCH DRUTCHAS
WAGNER DENARDIS
& VALITUTTI
ATTORNEYS AND COUNSELORS
ONE WOODWARD AVENUE
TENTH FLOOR
DETROIT, MICHIGAN
48226-3499
(313) 965-7900

EXHIBITS

- A Court of Appeals' opinion
- B Judgement
- C Verdict form
- D Opinion denying motion for JNOV
- E Farino v Renaissance, Schulze v Michigan Dept of Transportation,
unpublished decisions
- F Transcript excerpts from 4/1/98
- G Transcript excerpts from 4/2, 4/3, 4/7, 4/15/98

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WAGNER DeNARDIS
& VALITUTTI
ATTORNEYS AND COUNSELORS
ONE WOODWARD AVENUE
TENTH FLOOR
DETROIT, MICHIGAN
48226-3499

(313) 965-7900

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STATE OF MICHIGAN
COURT OF APPEALS

SHARDA GARG,

Plaintiff-Appellee/Cross-Appellant,

v

MACOMB COUNTY COMMUNITY MENTAL
HEALTH,

Defendant-Appellant/Cross-
Appellee,

and

LIFE CONSULTATION CENTER,

Defendant.

UNPUBLISHED
March 29, 2002

No. 223829
Macomb Circuit Court
LC No. 95-003319-CK

Before: Griffin, P.J., and Meter and Kelly, JJ.

PER CURIAM.

Defendant-appellant (“defendant”) appeals by right, and plaintiff cross-appeals, from a judgment for plaintiff entered after a jury trial. Plaintiff, a woman of Indian descent, was refused eighteen promotions between 1983 and 1997 in her job as a therapist with defendant, and she sued on theories of racial discrimination and retaliation. The jury rejected the racial discrimination claim but awarded plaintiff \$250,000 on the retaliation claim. We affirm.

Plaintiff based her retaliation claim on two separate theories: (1) that she was retaliated against for her 1981 action of slugging a supervisor, Donald Habkirk, in opposition to sexual harassment; and (2) that she was retaliated against for her 1987 action of filing a racial discrimination grievance against another supervisor, Kent Cathcart. Defendant contends that the trial court should have granted its motion for a directed verdict or for a judgment notwithstanding the verdict (“JNOV”) with regard to both of these theories because plaintiff failed to establish all the elements of a retaliation claim.

We review de novo a trial court’s decision to deny a motion for JNOV. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). We “view

the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party.” *Id.* “If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand.” *Id.* at 260-261. Similarly,

[a] trial court's ruling with respect to a motion for a directed verdict is reviewed de novo on appeal. *Thomas v McGinnis*, 239 Mich App 636, 643; 609 NW2d 222 (2000). In reviewing the trial court's ruling, this Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed. *Id.* at 643-644. A directed verdict is appropriate only when no factual questions exist on which reasonable minds could differ. *Id.* at 644. Neither the trial court nor this Court may substitute its judgment for that of the jury. *Hunt v Freeman*, 217 Mich App 92, 99, 550 NW2d 817 (1996). [*Wickens v Oakwood Healthcare System*, 242 Mich App 385, 388-389; 619 NW2d 7 (2000), vacated in part on other grounds 465 Mich 53 (2001).]

MCL 37.2701, a section of the civil rights act, states, in relevant part:

Two or more persons shall not conspire to, or a person shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this act.

In *DeFlaviis v Lord & Taylor, Inc.*, 223 Mich App 432, 436; 566 NW2d 661 (1997), this Court stated:

To establish a prima facie case of unlawful retaliation under the Civil Rights Act, a plaintiff must show (1) that he engaged in a protected activity; (2) that this was known by the defendant; (3) that the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action.

Plaintiff sufficiently established a jury question with regard to these elements by way of her evidence, concerning the slugging incident, that (1) she had observed Habkirk pulling an employee's bra strap while walking behind her and pulling an employee's underwear elastic while seated behind her; (2) around the same time, in 1981, plaintiff was walking along a hallway when she felt somebody touching her back; (3) she turned around and swung at this person; (4) the person was Habkirk, one of her supervisors; (5) after the slugging incident, Habkirk became cold toward her; (6) a coworker told her that Habkirk did not like her; (7) plaintiff did not receive the first available promotion, in 1983, after the slugging incident, despite being qualified for the position; (8) plaintiff was denied eighteen total promotions between 1983 and 1997, despite being qualified for the positions; (9) individuals less qualified than plaintiff received promotions while plaintiff did not; and (10) Habkirk remained in her chain of command throughout the years.

Viewing this evidence in the light most favorable to plaintiff, we conclude that reasonable jurors could differ with regard to whether plaintiff sufficiently established the elements of a retaliation claim. Indeed, reasonable jurors could conclude that plaintiff, by slugging Habkirk, sufficiently “raise[d] the specter” that she opposed a violation of the civil rights act. *Mitan v Neiman Marcus*, 240 Mich App 679, 682; 613 NW2d 415 (2000); see also *McLemore v Detroit Receiving Hosp & University Medical Center*, 196 Mich App 391, 396; 493 NW2d 441 (1992). Moreover, the different treatment plaintiff received after the slugging incident sufficed to establish causation. As noted in *McLemore*, *supra* at 396, a plaintiff may prove a retaliation claim using solely circumstantial evidence, and we may not second-guess the jurors’ decisions. See *Wickens*, *supra* at 389. The trial court properly denied defendant’s motion for a directed verdict or JNOV with regard to the slugging theory.

With regard to the second retaliation theory, plaintiff sufficiently established the elements of a retaliation claim by way of her evidence that (1) plaintiff filed a grievance alleging racial discrimination in June 1987; (2) Cathcart, a supervisor, knew about the grievance; (3) after filing the grievance, plaintiff failed to receive the next promotion that she sought, posted in December 1988, despite being qualified for the position; (4) plaintiff failed to receive seven total promotions between 1989 and 1997, despite being qualified for the positions; (5) individuals less qualified than plaintiff received promotions while plaintiff did not; (6) in 1994, plaintiff was transferred to a windowless office from which she could hear noises emanating from the adjacent bathroom, while persons more senior to plaintiff received better offices; (7) in 1996, Cathcart made a statement disparaging to blacks; (8) Cathcart made another comment disparaging to Indians; (9) Cathcart reprimanded plaintiff but not others for minor infractions; (10) Cathcart ignored plaintiff in staff meetings and treated her poorly in the hallways; (11) in 1984 or 1985, Cathcart used the word “n-----” in referring to blacks; and (12) Cathcart remained in plaintiff’s chain of command throughout the years.

Viewing this evidence in the light most favorable to plaintiff, we again conclude that reasonable jurors could differ with regard to whether plaintiff sufficiently established the elements of a retaliation claim. Defendant contends that plaintiff failed to demonstrate a causal connection between the adverse employment actions and the discrimination grievance because the first denial of a promotion occurred over 1½ years after the grievance. We agree with defendant that in discussing causation in retaliation cases, the case law emphasizes temporal proximity. See, e.g., *Howard v Canteen Corp*, 192 Mich App 427, 434; 481 NW2d 718 (1992), overruled in part on other grounds by *Rafferty v Markovitz*, 461 Mich 265 (1999), and *McLemore*, *supra* at 397. However, one must keep in mind that according to her testimony, plaintiff was denied *the first promotion that she sought* after the filing of the grievance. Accordingly, viewing the evidence in the light most favorable to plaintiff, reasonable jurors could have concluded that a causal connection existed. The trial court properly denied defendant’s motion for a directed verdict or JNOV with regard to the grievance theory.

Next, defendant argues that plaintiff’s claims of retaliation with regard to denials of promotions occurring more than three years before her lawsuit should have been barred by the statute of limitations and that the trial court therefore should have granted defendant’s motion for partial dismissal.¹ Defendant contends that the “continuing violations doctrine” cannot save

¹ We review de novo a trial court’s decision with regard to a motion for summary disposition.
(continued...)

these claims because each denial of a promotion was a discrete, identifiable act of potential discrimination that should have triggered plaintiff's awareness of the need to assert her rights or else risk losing them.

The Michigan Supreme Court discussed the continuing violations doctrine in *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505; 398 NW2d 368 (1986). The *Sumner* Court discussed "subtheories" of the continuing violations doctrine. One involves "allegations that an employer has engaged in a continuous policy of discrimination" that has harmed or might harm both the plaintiff and other members of his class. *Id.* at 528. Another involves allegations of "a series of allegedly discriminatory acts which are sufficiently related so as to constitute a pattern, only one of which occurred within the limitation period." *Id.*

In the instant case, plaintiff did not allege a policy that potentially affected other members of her class. Indeed, her claim was more analogous to the "series of events" theory mentioned in *Sumner*. See *Phinney v Perlmutter*, 222 Mich App 513, 546-547; 564 NW2d 532 (1997). *Sumner* set forth the following factors to be used in evaluating a claim under this theory:

The Fifth Circuit Court of Appeals has aptly described the factors to be considered in determining whether a continuing course of discriminatory conduct exists:

"The first is subject matter. Do the alleged acts involve the same type of discrimination, tending to connect them in a continuing violation? The second is frequency. Are the alleged acts recurring (e.g., a biweekly paycheck) or more in the nature of an isolated work assignment or employment decision? The third factor, perhaps of most importance, is degree of permanence. Does the act have the degree of permanence which should trigger an employee's awareness of and duty to assert his or her rights, or which should indicate to the employee that the continued existence of the adverse consequences of the act is to be expected without being dependent on a continuing intent to discriminate?" *Berry v LSU Board of Supervisors*, 715 F 2d 971, 981 (CA 5, 1983). [*Sumner, supra* at 538.]

Here, while plaintiff's denials of promotions arguably had a certain degree of permanence, the denials were extremely similar in type. Moreover, they were frequently recurring and very numerous. Under these circumstances, we conclude that plaintiff's claims sufficiently met the *Sumner* definition of "a series of allegedly discriminatory acts which are sufficiently related so as to constitute a pattern. . . ." *Id.* at 528. The trial court did not err in denying defendant's motion for partial dismissal.²

(...continued)

Miller v Purcell, 246 Mich App 244, 246; 631 NW2d 760 (2001).

² We acknowledge that the case of *Jones v Merchant's National Bank & Trust Co*, 42 F 3d 1054, 1058 (CA 7, 1994), cited by defendant, provides support for defendant's argument in this case. We note, however, that *Jones*, a federal case, is not absolutely binding on this Court. We additionally note that another case cited by defendant, *Rasheed v Chrysler Motors Corp*, 196 Mich App 196, 208; 493 NW2d 104 (1992), was overruled by the Supreme Court. See *Rasheed* (continued...)

On cross-appeal, plaintiff argues that the trial court should have ruled that interest on the total amount of plaintiff's damages began to run from the date of filing the complaint and not the date of the judgment, because none of the damages were "future damages" within the meaning of the statute awarding interest on future damages only from the date of judgment. This issue involves statutory construction and is therefore subject to de novo review. *Hinkle v Wayne County Clerk*, 245 Mich App 405, 413; 631 NW2d 27 (2001).

The jury awarded a lump sum of \$250,000 to plaintiff. After trial, the parties disputed the amount of interest due on the award, because MCL 600.6013(1) allows for interest on "future damages" to accrue only from the date of the judgment and not from the date of filing the complaint. The trial court apportioned the damages as follows: \$141,150 for future damages and \$108,850 for past or present damages. The court awarded interest from the date of the complaint on the \$108,850 and from the date of the judgment on the \$141,250, concluding that because plaintiff alleged physical injuries, MCL 600.6013(1) mandated that interest run only from the date of the judgment on the future damages.

MCL 600.6013(1) states:

Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section. However, for complaints filed on or after October 1, 1986, interest shall not be allowed on future damages from the date of filing the complaint to the date of entry of the judgment. As used in this subsection, "future damages" means that term as defined in [MCL 600.6301].

MCL 600.6301 states:

(a) "Future damages" means damages arising from personal injury which the trier of fact finds will accrue after the damage findings are made and includes damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of bodily function, and pain and suffering.

(b) "Personal injury" means bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm.

A clear and unambiguous statute must be enforced as written. See *Sun Valley Food Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999), and *Adrian School District v Michigan Public School Employees Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998). The plain language of MCL 600.6301 defines "future damages" as damages resulting from bodily harm, sickness, or disease. The instant plaintiff testified that she suffered from headaches and high blood pressure as a result of the alleged discrimination.³ This clearly constituted "bodily harm, sickness, or disease." Therefore, the trial court correctly calculated the interest from the date of

(...continued)

v Chrysler Corp, 445 Mich 109, 134-135; 517 NW2d 19 (1994).

³ The jury was also instructed to award future damages for "physical pain and suffering."

the judgment on the future damages portion of the award.⁴ We acknowledge that in *Phinney*, *supra* at 542, 562, and *Paulitch v Detroit Edison Co*, 208 Mich App 656, 661-663; 528 NW2d 200 (1995), this Court indicated that a plaintiff is entitled to prejudgment interest for future damages when the suit does not result from personal bodily injury. We find these cases sufficiently distinguishable from the instant case, however, because there was no indication in *Phinney* or *Paulitch* that the plaintiffs alleged physical manifestations resulting from discriminatory treatment.

Affirmed.

/s/ Richard Allen Griffin

/s/ Patrick M. Meter

/s/ Kirsten Frank Kelly

⁴ While it could be argued that *some* of plaintiff's damages that would accrue in the future were *purely* emotional and therefore did not fall within the definition of "future damages" in MCL 600.6301, plaintiff does not specifically address an apportionment issue or request alternative relief for apportionment on remand but merely argues that *none* of her damages fit within the MCL 600.6301 definition. Therefore, the issue of apportionment is deemed abandoned for purposes of appeal.

2

STATE OF MICHIGAN
IN THE MACOMB COUNTY CIRCUIT COURT

SHARDA GARG,
Plaintiff,
vs.

Case No. 95-3319 CK
Judge Roland Olzark sitting for
Hon. George E. Montgomery

MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, a governmental agency of
MACOMB COUNTY,
Defendants.

ALLYN CAROL RAVITZ, P.C.
Allyn Ravitz (P19256)
Attorney for Plaintiff
30300 Northwestern Hwy., Suite 115
Farmington Hills, Michigan 48334
(248) 932-3535/Fax (248) 932-4155

CHARLEEN O'NEILL (P47650)
Attorney for Plaintiff
28800 Old North River Road
Harrison Township, Michigan 48045
(810) 463-5747

KITCH, DRUTCHAS, WAGNER & KENNEY, P.C.
Karen B. Berkery (P38698)
Attorney for Defendants
One Woodward Avenue, Tenth Floor
Detroit, Michigan 48226
(313) 963-7929/Fax (313) 965-7403

ORDER OF JUDGMENT

At a session of said Court held in the
City of Mt. Clemens, Macomb County, Michigan
on _____, 1998

PRESENT: Honorable _____

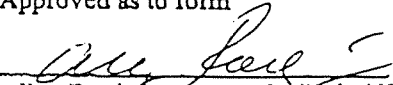
Circuit Court Judge


A trial having been had in this cause, the jury having rendered a verdict in the amount of TWO HUNDRED FIFTY THOUSAND (\$250,000.00) DOLLARS in favor of Plaintiff on April 23, 1998, Plaintiff having filed a Motion for Mediation Sanctions, and a Motion for Elliot Larsen Civil Rights Act fees and costs, an evidentiary hearing having been held as to Attorney Fees and Costs, and the court being fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED THAT a Judgment be and is hereby entered in favor of the Plaintiff, Sharda Garg, against Macomb County Community Mental Health Services, a governmental agency of Macomb County, in the amount of \$354,298.17 consisting of:

- 1) The jury award of \$250,000, with interest to run on \$108,850 of that award from the date of filing (7/21/95) which interest amount is an additional \$23,399.15 as of 4/23/98 and with interest to run from the entry of judgment on \$ 141,150, that portion of the award designated as future damages.
- 2) Costs under Elliott-Larsen \$15,059.82 with interest to run from the date of filing (7/21/95) which interest amount is an additional \$3,237.36 as of 4/23/98.
- 3) Attorney fees per mediation sanctions in the amount of \$56,000 with interest to run from 9/24/96 (the date of rejection of mediation) which interest amount is an additional \$6,601.84 as of 4/23/98.
- 4) No mediation costs.
- 5) No attorney fees under Elliott-Larsen

Approved as to form

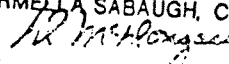

Allyn Ravitz, Attorney for Plaintiff


Karen Berkery, Attorney for Defendant

Circuit Court Judge

GEORGE E. MONTGOMERY
CIRCUIT JUDGE

AUG 17 1998

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: 

AUG 25 1998

3

VERDICT FORM

95-3314-CV
Garg v
Macomb County
Mental Health

1. Was the plaintiff discriminated against based on her national origin or color, where she was not selected for positions for which she applied subsequent to July 21, 1992?

ANSWER: NO (Yes or No)

2. Was the plaintiff retaliated against because she opposed sexual harassment or because she filed a charge or complaint about being discriminated against?

ANSWER: YES (Yes or No)

If your answer to either No. 1 or No. 2 is "Yes", please go to No. 3

If your answer to both No. 1 and No. 2 is "No", Please go to No. 4.

3. We, the jury find in favor of the plaintiff, Sandra Garg, and assess her damages at \$ 250,000.00.
4. We, the jury find in favor of the defendant, Macomb County Mental Health Services.

Signed: Brian [Signature]
Foreperson

FILED
MAR 24 11:17
CLERK
MACOMB COUNTY



4

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

SHARDA GARG,

Plaintiff,

vs.

File No. 95-3319-CK

MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, a government
agency of MACOMB COUNTY, and LIFE
CONSULTATION CENTER, a governmental
agency and division of MACOMB
COUNTY COMMUNITY MENTAL HEALTH
SERVICES, jointly and severally,

Defendants.

OPINION AND ORDER

Macomb County Community Mental Health Services, ("MHS"), moves for: (1) judgment notwithstanding the verdict, ("JNOV"), pursuant to MCR 2.610; (2) new trial, pursuant to MCR 2.611(A); and (3) remittitur, pursuant to MCR 2.611(E).

This action involves claims of unlawful employment discrimination based upon national origin and color and unlawful employer retaliation against plaintiff for opposing the alleged employment discrimination. The case was filed on July 21, 1995 and assigned to the Honorable George E. Montgomery. Although Judge Montgomery heard and decided many of the pretrial motions, the actual jury trial was conducted by this Court from March 27, 1998 to April 22, 1998. The jury returned a verdict on April 23, 1998 which rejected plaintiff's discrimination theory but accepted her

claim for unlawful employer retaliation. Based upon its finding of liability against defendant MHS, the jury awarded plaintiff \$250,00.00 in damages. Defendant MHS has filed motions for JNOV, new trial and remittitur.

I.

Defendant MHS first argues it is entitled to a JNOV because plaintiff failed to establish a prima facie case as to either of her two retaliation theories. Concerning the first theory, defendant contends a 1981 incident wherein plaintiff allegedly "swatted" supervisor Donald Habkirk for inappropriately touching plaintiff on the shoulder could not be the basis of a retaliation claim. Defendant points out that the proofs indicate this was plaintiff's reflexive act which occurred before she knew Habkirk's identity. Asserting the evidence indicates plaintiff never complained of the alleged incident of sexual harassment to any supervisors or promotional decision makers and that no decision makers knew of the incident, defendant argues there is no evidence to support two elements of plaintiff's first theory of retaliation.

Regarding plaintiff's second retaliation theory, defendant essentially contends plaintiff cannot rely upon a 1987 grievance wherein she claimed national origin discrimination perpetrated by supervisor Kent Cathcart. Defendant contends that most of the interviewers and decision makers involved in plaintiff's next seven requests for promotion, except Kent Cathcart, were unaware of the 1987 grievance. Defendant MHS points out that Cathcart was only involved in two of plaintiff's promotion applications between 1989

and 1997. Defendant denies there is any causal connection between her 1987 grievance and her failure, over a ten year period, to obtain a promotion.

Defendant MHS also argues a JNOV is appropriate because it gave legitimate, non-retaliatory reasons for its actions and plaintiff has failed to demonstrate such reasons were a pretext. Defendant states that plaintiff's applications for transfer to other jobs failed because successful applicants for promotion to such jobs had precedence over transfer applicants. Defendant also points to evidence given at trial which explained why plaintiff was given an office next to a bathroom and was not given a computer or a building key.

Responding to defendant's motion for a JNOV, plaintiff reminds the Court of Judge Montgomery's ruling that certain physical acts can convey a message better than words. Plaintiff contends her opposition to sexual harassment was clearly expressed when she "slugged" Donald Habkirk. Since Habkirk was the director of the Life Consultation Center at the time of the 1981 sexual harassment incident, plaintiff asserts her physical reaction to Habkirk's inappropriate touching had the effect of informing defendant MHS. Plaintiff states that Donald Habkirk directly participated in plaintiff's interviews for positions for which she was denied. Plaintiff also points out that Habkirk was in the chain of command for the other positions for which she was denied. Arguing that direct evidence of retaliation is not required, plaintiff asserts Robert Slaine told her she was not being promoted because Habkirk

did not like her. Plaintiff denies that the long time period since the 1981 incident between her and Donald Habkirk is dispositive of a causal connection with her failure to be promoted.

Plaintiff argues her retaliation claim, based upon her 1987 grievance, was supported by proof that Habkirk was aware of the grievance and was the next reviewing authority in command after the grievance initially went to Kent Cathcart. Plaintiff asserts her proofs were sufficient to demonstrate defendant's stated reasons for not promoting her were pretextual.

Pursuant to MCR 2.610(B)(3), in ruling on a motion for a JNOV, the court must give a concise statement of the reasons for the ruling, either in a signed order or opinion filed in the action, or on the record. Although MCR 2.610(B)(3) does not require formal findings of fact and conclusions of law as in a bench trial under MCR 2.517, in ruling on defendants' motion for a JNOV the court is required to examine the evidence presented at trial in the light most favorable to the plaintiff, to apply the law to the facts, and to state whether the evidence presented at trial was legally sufficient to support the plaintiff's claim. Forge v Smith, 458 Mich 198, 204; 580 NW2d 876 (1998); Pontiac School Dist v Miller, Canfield, Paddock & Stone, 221 Mich App 602, 612; 563 NW2d 693 (1997). If reasonable jurors could honestly reach different conclusions, then the motion should be denied, and the controverted matter should be decided by jury verdict. Bonelli v Volkswagen of America, Inc, 166 Mich App 483, 495, 514; 421 NW2d 213 (1988).

The Court will deny defendant's motion for a JNOV. In order to establish a claim of retaliation, the plaintiff must show: (1) she engaged in a protected activity; (2) the employer took adverse employment action against the plaintiff; and (3) a causal connection existed between the protected activity and the adverse action. See Polk v Yellow Freight System, 876 F2d 527, 531 (6th Cir 1989) and DeFloviis v Lord & Taylor, Inc, 233 Mich App 432, 436; 566 NW2d 661 (1997). An "adverse employment action" must be material, and must embrace an ultimate employment decision such as hiring, granting leave, discharging, promoting or compensating. See Mattern v Eastman Kodak Co, 104 F3d 702, 707 (5th Cir 1997) and Ledergerber v Stangler, 122 F3d 1142, 1144 (8th Cir 1997).

Plaintiff testified that she observed Donald Habkirk pulling on the bra strap and underwear elastic of co-workers at the Life Consultation Center. (Trial Transcript, April 1, 1998, pp 122-123, 130, 166). According to her testimony, Habkirk came behind plaintiff and inappropriately touched plaintiff's shoulder. (Trial Transcript, April 1, 1998, pp 126-129). Plaintiff was engaged in opposing sexual harassment when she "swatted" or "slugged" Habkirk for touching her. As Judge Montgomery ruled in his July 10, 1996 Opinion and Order, certain "physical acts can convey a message better than words". Considering that Donald Habkirk was the Director of the Life Consultation Center, plaintiff also adequately informed the agency of the inappropriate behavior. It was not necessary for plaintiff to initially know who was touching her to believe Habkirk's behavior constituted workplace sexual harassment.

o rule otherwise would make the existence of sexual harassment dependent upon proving the identity of the harasser. This is not the law. Plaintiff's conclusion that Habkirk was sexually harassing her was supported by her observations of Habkirk's workplace behavior with other women.

Plaintiff testified to numerous denials of promotions for which she was qualified. (Trial Transcript, April 1, 1998, pp 139, 154, 158; Trial Transcript, April 2, 1998, pp 17, 18-19, 23). Plaintiff's testimony indicates that less qualified people were hired for both promotional and lateral transfer positions instead of plaintiff. (Trial Transcript, April 1, 1998, pp 151, 154, 166; Trial Transcript, April 2, 1998, pp 15, 17, 25). The trial testimony also showed that Donald Habkirk was in the chain of command leading to plaintiff, (Trial Transcript, April 2, 1998, p 16), and that Habkirk was aware of plaintiff's various job applications. (Trial Transcript, April 2, 1998, pp 22, 24).

From the evidence presented, the jury could also reasonably conclude there was a causal connection between plaintiff's physical encounter with Donald Habkirk and plaintiff's inability to be promoted. Plaintiff testified that Habkirk became cold to her after the physical confrontation. (Trial Transcript, April 1, 1998, p 122). Additionally, Robert Slaine told plaintiff that she was not getting promotions because Donald Habkirk did not like plaintiff. (Trial Transcript, April 1, 1998, p 134). Plaintiff's credibility was a matter for the jury to consider. See Zinchook v Turkewycz, 128 Mich App 513, 523; 340 NW2d 844 (1983).

Considering that plaintiff presented considerable evidence of many promotions denied where plaintiff was qualified for such positions and lesser qualified persons were hired, reasonable minds could conclude that Donald Habkirk used his position of authority to retaliate against plaintiff for her opposition to his perceived act of sexual harassment. Since at least one of the retaliation theories presented to the jury was supported by the evidence, defendant MHS is not entitled to a JNOV.

II.

Defendant MHS argues at least one of two alternate theories of liability submitted to the jury was unsupported by the proofs at trial. Defendant essentially contends a new trial is necessary where the Jury Verdict Form makes it impossible to determine whether the jury accepted a theory of liability which was unsupported by proof. Defendant MHS also asserts it was denied a fair trial because plaintiff's counsel engaged in prejudicial misconduct during trial which diverted the jury from the issues in this case. Arguing that the amount of the jury's award was excessive and against the great weight of the evidence, defendant contends plaintiff's claimed pension loss was speculative. Defendant MHS asserts a new trial is required where the verdict failed to include findings necessary of a valid judgement.

In response, plaintiff argues defendant's motion for a new trial must be denied because competent evidence was presented to support both theories of unlawful retaliation presented to the jury. In regard to these theories, plaintiff points out that she:

(1) physically opposed sexual harassment by Donald Habkirk when Habkirk inappropriately touched plaintiff in 1981; and (2) filed a discrimination grievance in June of 1987, wrote a letter to Habkirk in August of 1994 and had her attorney send a notice of retention letter in October of 1994. Plaintiff contends the proofs demonstrated she was repeatedly denied promotions and that she was evaluated to higher standards than other applicants for the same positions or asked different questions during job interviews. Plaintiff denies her counsel engaged in misconduct during the trial and asserts her claim for pension loss was supported by the proofs. Pointing out that Judge Montgomery repeatedly ruled that alleged acts of retaliation which occurred prior to 1992 were not barred by the statute of limitations, plaintiff argues the verdict was well within the range of the evidence.

Whether to grant a motion for a new trial is within the trial court's discretion. The standard of review is whether the verdict was against the overwhelming weight of the evidence. In determining whether the evidence was overwhelming, the appellate courts give deference to the trial court's unique ability to judge the weight and credibility of the testimony. Courts do not substitute their judgment for that of the jury unless the record reveals a miscarriage of justice. Heshelman v Lombardi, 183 Mich App 72, 76; 454 NW2d 603 (1990).

The Court has already determined that plaintiff's first retaliation theory was supported by the evidence. The second theory which plaintiff submitted to the jury involved whether

plaintiff filed a charge or complaint about being discriminated against. Evidence presented at trial indicates that plaintiff filed a grievance in June of 1987 which included allegations of unlawful discrimination based upon national origin. (Trial Transcript, April 2, 1998, p 75). Plaintiff's testimony indicates her grievance was denied. (Trial Transcript, April 2, 1998, p 78).

Evidence of adverse employment action was circumstantially shown to be causally connected to plaintiff's 1987 grievance. Plaintiff testified that her supervisor, Kent Cathcart, made a disparaging comment about Indian doctors when he found out that plaintiff's son had been admitted to a medical training program. (Trial Transcript, April 2, 1998, p 94). When the Life Consultation Center was dissolved, plaintiff testified that she was transferred to a make-shift office next to a bathroom in the First North facility. (Trial Transcript, April 3, 1998, pp 186-187). At the time she was given the worst possible office space, plaintiff had the most seniority of any person at the First North facility. (Trial Transcript, April 3, 1998, p 187). Given that plaintiff's immediate supervisor was Kent Cathcart and the most senior supervisor was Donald Habkirk at the time plaintiff filed her grievance against Cathcart, a jury could reasonably conclude plaintiff's supervisors intended to deny any promotions to plaintiff and make plaintiff's life miserable because she filed a grievance. The evidence showed that plaintiff made numerous applications for promotion after the grievance was filed; but never received any promotion despite her qualifications. In short,

plaintiff has presented sufficient evidence for her second retaliation theory. Since both retaliation theories submitted to the jury were supported by evidence produced at trial, Defendant MHS' motion for a new trial must be denied.

III.

Defendant MHS finally argues it is entitled to remittitur because the jury award of \$250,000.00 was excessive and the product of jury sympathy contributed to by misconduct of the plaintiff's counsel. Defendant contends the jury was improperly assailed with highly inflammatory remarks about African-Americans and the passions thereby aroused in the jury led to a punitive type of award. Defendant additionally argues the amount of plaintiff's claimed economic loss was speculative. Defendant MHS points out that plaintiff intends to remain employed with the County for another eleven years. Since a retiree's pension is determined by the average earnings during the final five years of county employment, defendant contends plaintiff's claimed loss of \$73,065.00 in future pension payments is speculative.

Stating that the jury award is well supported by the proofs, plaintiff argues juries have awarded similar amounts in similar cases. Plaintiff asks the Court to deny the motion for remittitur because the verdict and award is not the product of improper methods, prejudice, passion, corruption or mistake.

The Michigan Supreme Court held that the subjective "shock the conscience" test is not to be used by Michigan courts when reviewing a motion for remittitur. The Court agreed a trial court

ould examine a number of factors, such as whether the verdict was induced by bias or prejudice, but believed the inquiry should be limited to objective considerations relating to the actual conduct of the trial or to the evidence adduced. Palenkas v Beaumont Hospital, 432 Mich 527, 532; 443 NW2d 354 (1989). The trial court's decision is reviewed under an abuse of discretion standard. [d. at 540.

The Court will deny defendant's motion for remittitur. First, the evidence indicated plaintiff would have increased her income had she been granted any of the promotions which she sought. Under a continuing wrong doctrine, conduct distant in time was fair evidence at trial. It was clear that plaintiff could have been earning an increased income almost two decades ago had she not been subjected to retaliatory treatment by her supervisors. Second, it is not speculative for a jury to conclude that plaintiff's supervisors will never allow plaintiff a promotion until she retires. In Michigan, in order to recover damages on the basis of future consequences, it is necessary for a plaintiff to demonstrate with reasonable certainty that the future consequences will occur. Larson v Johns-Mansville Sales Corp, 427 Mich 301, 316-317; 399 NW2d 1 (1986). Calculating from the cost of living increases which plaintiff would likely receive until she retired, a jury could compare plaintiff's likely final pay rate with that which she could have otherwise expected. The jury's award was not excessive and was based upon reasonable certainty. Moreover, the Court's instructions to the jury included a caution to deliberate on the

asis of the evidence and not on the basis of passion, sympathy or
initive motives.

Defendant Macomb County Community Mental Health Services'
otions for judgment notwithstanding the verdict, new trial and
emittitur are DENIED. Pursuant to MCR 2.602(A)(3), this Order
esolves the last pending claim and closes the case.

IT IS ORDERED.

ROLAND L. OLZARK



NOV 3 1999

HON. ROLAND L. OLZARK
Visiting Judge

A TRUE COPY

Carmella Sabourgh

DEPUTY CLERK

ated: 

: Allyn Carol Ravitz, Attorney for Plaintiff
Charleen O'Neill, Attorney for Plaintiff ✓
Karen B. Berkery, Attorney for Defendant
Monica Farris Linkner, Attorney for Plaintiff

BY 

5

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE FARINO,

Plaintiff-Appellee,

v

RENAISSANCE CLUB and JOHN GUY,

Defendants-Appellants.

UNPUBLISHED

June 29, 1999

No. 206031

Wayne Circuit Court

LC No. 95-507399 CZ

Before: Doctoroff, P.J., and Markman and J. B. Sullivan*, JJ.

PER CURIAM.

In this obesity discrimination action, defendants appeal as of right from a judgment, following a jury trial, awarding plaintiff \$275,191.50, and denying defendants' motion for judgment notwithstanding the verdict (JNOV), new trial, or remittitur. We reverse.

Plaintiff, who at all relevant times was overweight, was hired by defendant Renaissance Club (RC) as an accounting clerk. Defendant Guy, RC's manager, later hired plaintiff as a club secretary. When plaintiff returned from medical leave, Guy transferred her to the position of day receptionist, where she remained for sixteen months. Because of plaintiff's lackluster performance and members' complaints, and at the recommendation of relatives of plaintiff's, Guy later transferred her to the position of night receptionist. Plaintiff did not want to work the later shift and stated that she would quit once she found another job. When plaintiff refused to set a firm date for her departure after several requests for such a date, Guy did so himself. Plaintiff claims that Guy's action constituted an involuntary termination of her employment and was motivated by a discriminatory animus based on her weight in violation of MCL 37.2202(1)(a); MSA 3.548(202)(1)(a).

Assuming, without deciding, that the trial court properly submitted the question whether plaintiff left RC's employ voluntarily or involuntarily to the trier of fact, see *Middleton v Arkansas Employment Security Div'n*, 265 Ark 11, 13-14; 576 SW2d 218 (1979), we find that trial court nonetheless erred in denying defendants' motion for JNOV because plaintiff failed to make out even a prima facie case of discrimination. "In reviewing a motion for JNOV, this Court views all evidence in a light most favorable to the nonmoving party." *Severn v Sperry Corp.* 212 Mich App

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

406, 412; 538 NW2d 50 (1995). "Only if the evidence so viewed fails to establish a claim as a matter of law, should a motion for [JNOV] be granted." *Nabozny v Pioneer State Mutual Ins Co*, 233 Mich App 206, 209-10; 591 NW2d 685 (1998). If, however, reasonable jurors could honestly have reached different conclusions, the jury verdict must be allowed to stand. *Severn*, *supra* at 412.

A *prima facie* case of discrimination can be established by proof of intentional discrimination or disparate treatment. *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 651; 513 NW2d 441 (1994). To establish a disparate treatment claim, the plaintiff must prove that she was a member of a protected class and that she was treated differently than persons of a different class for the same or similar conduct or performance. *Id.*; *Reisman v Regents of Wayne State Univ*, 188 Mich App 526, 538; 470 NW2d 678 (1991). The plaintiff's weight need not be the only reason, or even the main reason, for the adverse employment decision, but it does have to be a motivating factor. Cf. *Reisman*, *supra* at 539; *Lamoria v Health Care and Retirement Corp*, 233 Mich App 560; ___ NW2d ___ (1999), adopting 230 Mich App 801, 808-09; 584 NW2d 589 (1998) (*Lamoria I*). To be similarly situated, "all of the relevant aspects" of plaintiff's employment situation must be "nearly identical" to those of the employee(s) with whom she compares herself. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 699-700; 568 NW2d 64 (1997) (Brickley, J). See also *Mitchell v Toledo Hospital*, 964 F2d 577, 583 (CA 6, 1992).

Plaintiff here sought to compare herself with Rosie Moncivais, an average-weight woman who also worked as a receptionist and reported to the same supervisors. Plaintiff, who admittedly did not like dealing with the public, was the subject of several complaints by members regarding the way she treated them. Although Moncivais' performance review indicated that she had a negative attitude, it also noted that she "displays a desire to be of service." Unlike in plaintiff's case, there was no mention of member complaints regarding Moncivais' attitude. Nevertheless, Moncivais was transferred to the night shift because of performance problems, just as plaintiff was. She accepted the transfer, whereas plaintiff objected to it and stated that she intended to leave imminently if she were not returned to the day shift. Thus the evidence shows that plaintiff and Moncivais were *not* similarly situated in terms of their performance problems, yet *were* treated the same, i.e. transferred to the night shift. Once on the night shift, plaintiff and Moncivais were not similarly situated because Moncivais accepted the change whereas plaintiff did not and indicated her intent to quit. It was that threat that led eventually to the termination of her employment. There was no evidence that Moncivais (or any other employee) made a similar threat but was not ultimately discharged. To the contrary, Moncivais was urged to quit but refused. Therefore, plaintiff has failed to establish discrimination as the result of disparate treatment.¹

To prove purposeful discrimination, the plaintiff "must show that she was a member of a protected class, that she was discharged or otherwise discriminated against with respect to employment, that the defendant was predisposed to discriminate against persons in the class, and that the defendant acted upon that disposition when the employment decision was made." *Coleman-Nichols*, *supra*. In a case involving direct evidence of discrimination, the plaintiff bears the burden of proving both the discriminatory animus and its causal nexus to the challenged employment decision. *Harrison v Olde Financial Corp*, 225 Mich App 601, 612-13; 572 NW2d 679 (1997). "While the continuous use of racial or ethnic slurs may be sufficient for finding

liability for discrimination, occasional or sporadic instances of such conduct are insufficient." *Sargent v International Bhd of Teamsters*, 713 F Supp 999, 1017 (WD Mich, 1989). In *Hong v Children's Memorial Hosp.*, 993 F2d 1257, 1266 (CA 7, 1993), the court stated:

Evidence of a supervisor's occasional or sporadic use of a slur directed at an employee's race, ethnicity, or national origin is generally not enough to support a claim under Title VII. We have held that such remarks, when unrelated to the decisional process, are insufficient to demonstrate that the employer relied on illegitimate criteria, even when such statements were uttered by a decision maker. [Citations and footnote omitted.]

Thus, absent evidence that "the remarks upon which plaintiff relies were related to the employment decision in question, they cannot be evidence of discriminatory discharge." *McCarthy v Kemper Life Ins Cos*, 924 F2d 683, 686-87 (CA 7, 1991).

The evidence against Guy, taken in a light most favorable to plaintiff, includes the following: (1) in 1988 and 1989-- at least four or five years prior to plaintiff's termination in April 1993-- while plaintiff was still club secretary, Guy noted a concern in her performance reviews about plaintiff's weight. The remarks, which were made in the context of a concern for plaintiff's overall health, were not hostile or derogatory and, in our judgment, are not evidence of a weight-based animus. *Lamoria I, supra* at 810 n 8;² (2) at unspecified times, although apparently at least one year prior to plaintiff's departure, an instance occurred in which Guy imitated the sight and sound of plaintiff's walk in a common area, causing other employees to laugh, and (3) at an unspecified time, although apparently at least one year prior to plaintiff's departure, Guy remarked that plaintiff was fat and stunk. The act of imitating plaintiff's walk, and the remark that she was fat and stunk were indeed derogatory and thus may be considered evidence of weight-based animus. *Lamoria, supra*, at 810. However, they predated plaintiff's termination by at least a year or more; they did not indicate any aversion to employing overweight people or any intention to terminate plaintiff's employment; and they were not made in reference to any employment decision. In our judgment, these were entirely isolated and stray remarks, wholly unrelated to the employment process. In particular, we again emphasize that Guy never raised the issue of terminating plaintiff's employment until she affirmatively announced her intention to quit.

In conjunction with these occurrences, we also have the following facts in evidence: (1) plaintiff was placed in two responsible positions by Guy, including one as his personal secretary, when she weighed at least 300 pounds; (2) Guy employed three former receptionists whose weight was apparently comparable to that of plaintiff; (3) Guy demonstrated considerable kindness and respect toward plaintiff on several occasions, including during difficult periods of medical care and treatment of plaintiff; and (4) despite considerable evidence that plaintiff was not performing her job at the highest standards, including statements from plaintiff herself that she did not enjoy dealing with the public, Guy never sought to terminate plaintiff and only imposed a final work date upon her after she indicated her intention to leave but repeatedly refused to supply a final work date on her own.

We conclude that the evidence here was insufficient as a matter of law to enable a rational trier of fact to find that Guy or the RC acted with a discriminatory animus in terminating plaintiff's employment and, therefore, that the trial court erred in denying defendants' motion for JNOV.³

Reversed.

/s/ Martin M. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan

¹ We assume for the purpose of the instant analysis that, although indicating her intention to resign at some indeterminate time, plaintiff was involuntarily discharged here because her final working date was eventually imposed upon her by defendant. However, it is hardly clear that, once an employee has announced his or her intention to quit a position, that an employer must invariably allow the employee to determine the specific departure date at the risk of being responsible for the employee's 'firing.' See *Schultz v Oakland Co*, 187 Mich App 96, 102; 466 NW2d 374 (1991); *Middleton v Arkansas Employment Security Div'n*, 265 Ark 11; 576 SW2d 218 (1979). It is not difficult to envision potential morale or dissension problems that may arise where an employer is compelled to await a lame-duck employee's decision on a final working date.

² "[W]e would not expect trial courts faced with motions for summary disposition on claims of weight discrimination to ignore real differences between the characteristics of race and weight. Race is basically an immutable characteristic; being of a particular race is not a negative attribute. In contrast, weight is an aspect of oneself that is subject to some control by one's conduct. It is common knowledge that many health professionals advise against being 'overweight.' Accordingly, comments that could reasonably be taken as mere advice about diets and the like do not amount to expressions of animus sufficient to indicate a likelihood that one would engage in illegal weight discrimination."

³ Because of our decision, it is unnecessary to deal with defendants' contentions that the trial court reversibly erred in allowing one witness to testify about alleged anti-union efforts on the part of defendants not involving plaintiff; in refusing to allow defendants to cross-examine that same witness through the use of her personnel file; in refusing to allow the admission of classified ad evidence concerning employment opportunities in the Detroit area; and in refusing to instruct the jury on the issue of mitigating damages.

STATE OF MICHIGAN
COURT OF APPEALS

KAREN SCHULZE,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF TRANSPORTATION,
WEN HOW KUO, PAUL MILLIMAN, and
MICHAEL GREEN,

Defendants-Appellees.

UNPUBLISHED

January 23, 1996

No. 174211

LC No. 92-072751-NZ

Before: Fitzgerald, P.J., and Sawyer and Young, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendants in this action in which plaintiff alleged sexual harassment in violation of the Civil Rights Act, MCL 37.2101 *et. seq.*; MSA 3.548(101) *et. seq.*, and retaliation for filing a civil rights complaint related to the harassment. The trial court dismissed plaintiff's sexual harassment claim on the ground that it was barred by the statute of limitations, MCR 2.116(C)(7). The trial court later dismissed plaintiff's claim of retaliation for failure to establish a prima facie case. We affirm.

Plaintiff was employed by the Michigan Department of Transportation in 1980 as a Typist Clerk III. She worked in the Materials and Technology Division as a Typist Clerk III until March 1988 when she was reallocated to a Typist Clerk IV. Defendants Kuo, Milliman, and Green were employees of MDOT in the Materials and Technology Division.

In 1988, plaintiff and defendant Green, a technician, engaged in an affair that plaintiff alleged she was coerced into and that Green alleged was consensual.¹ Plaintiff alleged that she ended the affair in March 1989 and that on April 3, 1989, she informed her supervisor, defendant Kuo, of the affair. According to plaintiff, no action was taken against Green. Plaintiff alleged that after she ended the affair with Green, other employees in the division began to sexually harass her. Plaintiff claimed that on April 19, 1989, she reported these incidents to Kuo, who again took no action.

On July 7, 1989, plaintiff complained to MDOT's sexual harassment counselor, Ms. Mikelonis. Plaintiff requested that her desk be moved and that she have no contact with defendant Green or the other technicians. By affidavit, Kuo indicated that the changes caused him some difficulty because he was required to act as a "go-between" for plaintiff and the technicians, relaying information and obtaining items for plaintiff from the technicians.

On July 12, 1989, plaintiff filed a union grievance alleging sexual harassment, and filed complaints with the Michigan Department of Civil Rights and the United State Equal Employment Opportunity Commission relating to Green's conduct. The grievance was settled on August 1, 1989, by an agreement to move desks and a requirement that no contact occur between plaintiff and Green in the absence of a supervisor. On August 22, 1989, plaintiff met with Kuo and his supervisors, including

defendant Milliman and Davison, head of the Materials and Technology Division, in an attempt to resolve alleged continued harassment by Kuo and Green. Apparently, no action was taken against Kuo or Green.

Mikelonis stated in her affidavit that plaintiff had requested that Mikelonis find a position for her elsewhere in the department and that they discussed several other locations. On August 25, 1989, Mikelonis informed plaintiff by letter that, "pursuant to her request," she had located a vacant Typist Clerk IV position for her in Engineering Services. The September 11, 1989, transfer did not result in any reduction in pay or benefits, but resulted in a change in work location from the secondary complex in Lansing to downtown Lansing. Plaintiff's complaint alleged that the transfer was involuntary.

On September 1, 1989, plaintiff filed a grievance that was based on the reassignment and a "working-out-of-classification" grievance. In response to the reassignment grievance, MDOT indicated in writing that the reassignment was an "employee conduct reassignment." That grievance was settled in January 1991 by transferring plaintiff to a Typist Clerk IV position at the secondary complex.

Plaintiff filed the complaint in the present action on September 8, 1992.

Plaintiff first claims that the trial court erred in determining that plaintiff's sexual harassment claim was time-barred. Whether a claim is barred by the statute of limitations is a question of law. This Court reviews questions of law de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 30; 467 NW2d 21 (1991).

The period of limitations for actions to recover damages to a person or property is three years. MCL 600.5805(1) and (8); MSA 27A.5805(1) and (8). Thus, an action based on the Civil Rights Act must be brought within three years after the cause of action accrued. *Sumner v Goodyear Tire & Rubber Co*, 427 Mich 505, 510; 398 NW2d 368 (1986). Such a cause of action accrues at the time the alleged discriminatory act occurred. *Briggs v Barden Cablevision*, 166 Mich App 189, 193; 420 NW2d 99 (1993).

Plaintiff failed to identify any facts that could be developed in support of a claim of sexual harassment occurring within the three-year limitation period. Plaintiff contends, however, that the trial court erred in failing to apply the "continuing violation" doctrine to toll the running of the statute of limitations in this case. She argues that her allegedly retaliatory job transfer in September 1989 constituted a part of a continuing pattern of harassment because the transfer was "intrinsically connected" to previous alleged harassment. See *Meek v Michigan Bell Telephone Co*, 193 Mich App 340; 483 NW2d 407 (1992). In support of her contention that her transfer was an act of harassment, plaintiff cites MCL 37.2103(h)(ii); MSA 3.548(103)(h)(ii), which defines conduct that "has the purpose or effect of substantially interfering with an individual's employment . . . or creating an intimidating, hostile or offensive employment . . . environment" as sexual harassment. Plaintiff failed, however, to offer any evidence to support the allegation. Rather, she merely alleged that the transfer was a "stereotypical response" to a woman's complaint of discrimination in the work place. Similarly, she offered no evidence to substantiate her allegation that the transfer took place at the behest of the "harassers." Although plaintiff offered evidence of a civil service form CS-102, requesting a higher classification, to show that her transfer was involuntary, she offered no evidence to show how the allegedly involuntary nature of the transfer served to establish a causal connection between her claims of harassment and the transfer.

Further, even if plaintiff had established that the transfer was related to a previously occurring pattern of discriminatory conduct, this is not necessarily sufficient to warrant application of the continuing violation doctrine. Plaintiff must also establish that the previous acts of alleged harassment

lacked the degree of permanence necessary to trigger her awareness of and duty to assert her rights until the last act of harassment within the limitations period. *Meek, supra* at 344-345. Indeed, the continuing violation doctrine cannot be used where, as here, plaintiff had in fact made claims or reports of discriminatory conduct more than three years prior to the filing of the complaint, since plaintiff was necessarily aware of the pattern of discriminatory conduct before the three-year limitations period. *Rasheed v Chrysler Motors Corp.*, 196 Mich App 196, 208; 493 NW2d 104 (1992), rev'd on other grounds 445 Mich 109 (1994); *Bell v Chesapeake & O R Co.*, 929 F2d 220, 225 (CA 6, 1994). Plaintiff's filing of a grievance in July 1989 based upon her allegations of sexual harassment at the Materials and Technology Division indicates plaintiff's awareness of her rights and her duty to assert them more than three years prior to the filing of her complaint in circuit court.

In sum, plaintiff failed to provide evidence to substantiate her claim that her transfer constituted an act of sexual harassment or that the transfer was part of a continuing pattern of improper conduct that would invoke the "continuing violation" exception to the statute of limitations. Accordingly, the trial court did not err in finding that the claim was time-barred.

Plaintiff also maintains that the trial court erred in finding that plaintiff failed to establish a prima facie case of retaliation. To establish a prima facie case of unlawful retaliation under the Civil Rights Act, the plaintiff must set forth facts showing (1) that she had opposed violations of the Civil Rights Act and (2) that the opposition or participation was a significant factor in an adverse employment decision. *Johnson v Honeywell Information Systems, Inc.*, 955 F2d 409 (CA 6, 1992); *Booker v Brown & Williamson Tobacco Co.*, 879 F2d 1304, 1310 (CA 6, 1989). Here, the trial court concluded that plaintiff did not establish these elements and, further, that she did not prove that defendants' proffered legitimate, nondiscriminatory reasons for its actions were merely a pretext.

Indeed, plaintiff established that she engaged in a protected activity when she filed her various claims and grievances alleging sexual harassment. Similarly, plaintiff established that defendant was aware of her exercise of her civil rights. However, plaintiff did not establish that her transfer constituted an "adverse employment action." More importantly, even if she did, plaintiff did not establish that the transfer was causally connected to the exercise of her civil rights in making the sexual harassment complaints. Finally, she offered no evidence to rebut defendants' assertion that the transfer was based on legitimate, nondiscriminatory business considerations. Because plaintiff failed to establish a causal connection between her exercise of her civil rights and the employment action taken by defendants, the trial court properly granted summary disposition since plaintiff failed to establish a prima facie case of unlawful retaliation.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Robert P. Young, Jr.

¹ Plaintiff alleged that Green had supervisory control over her. MDOT claimed that Green had no supervisory control over plaintiff.

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

SHARDA GARG,

Plaintiff,

Case No. 95-3319-CK

vs.

MACOMB COUNTY COMMUNITY
COLLEGE MENTAL HEALTH,

Defendant.

TRIAL

Before the Honorable Roland Olzark, Circuit Judge,
on April 1, 1998, at 40 North Main, 2nd Floor, Macomb
County Court Building, Mt. Clemens, Michigan.

APPEARANCES:

ALLYN CAROL RAVITZ
CHARLEEN O'NEILL

Appearing on behalf of the Plaintiff

KAREN B. BERKERY

Appearing on behalf of the Defendant

TRANSCRIBED BY:

DAVID A. CUCINELLA
Certified Court Reporter, CSMR-3614

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during the trial of this case.

The other thing I would tell you is that this week our schedule is going to be a little differently because of other matter that have been set for me which -- to where it was going to ducktail into this case. So today we're going to go the full day, except we'll break about quarter to twelve and come back about quarter to two. And then tomorrow we're going to go from 9:00 to 1:00 and Friday 9:00 to 1:00. We'll go straight through and then you'll be done for the day. Then starting next week we hope we'll follow the regular routine for the most part. That would be 9:00 to 12:00 and 1:30 to 4:30 -- give and take some time depending on where we are with witnesses and so forth. So, that will give you some idea of what -- of what we face here. Okay, at this point now I'm going to ask the plaintiff's attorney to make her opening statement.

Opening Statement by Ms. Ravitz.

MS. RAVITZ: Your Honor, opposing counsel, ladies and gentlemen of the jury. My name is, you heard, is Allyn Ravitz, and this is my client Sharda Garg.

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2 put pressure on her to make her uncomfortable
3 increasingly, as she filed her grievance, as she filed
4 her lawsuit and these things will -- I'll tell you about
5 a little bit more in a few minutes.

6 Now there's another part of the cases that's a
7 little bit more complicated but not too complicated I'm
8 sure for -- for you, and that's another type of
9 retaliation. The evidence will show that the man who is
10 now head of the -- of the Pro County Mental Health
11 Services was somewhat peculiar at one point in time --
12 maybe even continuing today. He liked to go around
13 snapping women's bras and he had stuck his hands -- hand
14 in the women's underpants. And a bunch of people had
15 heard that he had jumped at -- was waiting in the shower
16 laying in wait for a very pretty employee at some party
17 and he jumped out of this shower in this bathroom in the
18 house where the party was being held to surprise her.
19 Fortunately for him her military husband had come in
20 instead, but he -- that was the time of shenanigans he
21 did. The evidence will show that at some point in time
22 he came up behind Miss Garg who was aware of his
23 behavior and he reached behind her and she knew it but

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2 she -- hit him.

3 Now, she never reported him to anyone. She --
4 (Inaudible words: Someone coughing)-- opposed to that
5 kind of thing. And she didn't she note -- from her part
6 it was over -- she thought he was immature. He was
7 leaving her alone. And so it's not really a sexual
8 harassment case at all. But the law is, if you are
9 retaliated against because you opposed something you
10 believe to be sexual harassment -- and in this case the
11 smacking of him -- and as a result of that opposition
12 people treat you differently. People hold it against
13 you. That is against the law. The Judge will instruct
14 you, and so you are -- in the testimony you'll discover
15 that at some point Mrs. Garg and her husband were at
16 their home with Mr. Slinge (phonetic), who was a friend
17 of hers and he and his wife were -- maybe girlfriend
18 were at their home and they were inquiring why can't
19 she get a promotion and Mr. Slinge said, you're never
20 gonna get a promotion. Mr. Hapkirk (phonetic) doesn't
21 like you. And there was no reason for Mr. Hapkirk, who
22 is now head of the whole program to dislike her, because
23 she is a woman that got outstandings on her evaluations.

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2 A person that counseled with all mental health people in
3 certain areas of mental health all over the county. She
4 was liked by her colleagues. There was -- and Mr.
5 Hapkirk wasn't directly supervisor of her. There was no
6 reason for him to not like her, except that big as he
7 is, Mr. Hapkirk was not a big a person as little Sharda
8 Garg. She was willing to put it behind her, but he held
9 a grudge.

10 So those are the two cases that we're going to
11 be sort or presenting before you. One is discrimination
12 on basis of race and color and retaliation for
13 complaining about that. And retaliation for opposing
14 sex -- what she believed to be sexual harassment, and
15 what happened to her as a result of that.

16 In any event the story of Mrs. Garg I'll
17 explain to you in a little bit some of the things I
18 think you should look for, but we have to prove that
19 more likely than not, and you are able to use your own
20 personal experiences in life, knowledge and savvy to
21 conclude or infer what happened. You can use that.
22 Everything doesn't have to be exactly before you just
23 drawing a -- it out personally -- you can conclude
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THE COURT: Have a seat here please.

SHARDA GARG

(Whereupon having been first duly sworn to
tell the truth, the whole truth and nothing but the
truth, testified as follows.)

DIRECT EXAMINATION

BY MS. RAVITZ:

Q Would you please state your name for the record?

A My name is Sharda, S-H-A-R-D-A, Garg, G-A-R-G.

Q And how old are you, Mrs. Garg?

A I'm 54.

Q Where do you live?

A I live in Shelby Township.

Q And how long have you lived there?

A About 20 years.

Q Are you married?

A Yes, I am.

Q And for how long have you been married?

A Thirty years.

Q Would you please describe your family to the jury?

A My husband is a senior research scientist at GM
Tech Center in Warren. I have two boys, 25 and 21.

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2 don't have a problem, but if we're going to sit here and
3 say isn't it true that you have --.

4 THE COURT: Yeah, yeah, that's a leading
5 questions. And even if it's innocuous it's a bad habit
6 to get into asking leading questions cause sometimes
7 you're going to get into an area where there going to be
8 sustained and then you're going to be caught off guard.
9 So, --

10 MS. RAVITZ: (Interposing) Okay.

11 THE COURT: I would -- just on a -- helping
12 your forensic skills would be well to the avoid leading
13 questions wherever possible.

14 MS. RAVITZ: I was just trying to move this
15 along since they're in evidence.

16 THE COURT: Well I know but to keep moving it
17 along --

18 MS. RAVITZ: Okay. All right.

19 THE COURT: Manner we suggested, but
20 nevertheless if you're gonna ask that just say, what
21 does that show up here, and I had four evaluations and
22 let's go on with it.

23 MS. RAVITZ: Okay.

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2 BY MS. RAVITZ:

3 Q In Exhibit 64 how many outstandings did you have
4 out of 12?

5 A Eight.

6 Q Now in -- when was the first time when a T3
7 position became available, Therapist Three
8 position?

9 A Sometime in May of '93 -- sorry '83.

10 Q Okay. What did you get in your evaluation from May
11 of '83? Your performance review of May of '83?

12 A I got five outstandings, one, two -- three
13 , satisfactories, and I got three very goods.

14 Q Now when you received those -- that evaluation,
15 what was your reaction?

16 A I was shocked, because I had never got a
17 satisfactory before. At least not in the recent
18 years, and I was wondering why I was getting those.

19 Q Did you comment on any form about your protest?
20 About the evaluation?

21 A I wrote a letter to Mr. Slange.

22 Q Okay. Is that letter contained in any of your
23 evaluations?

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2 or Life Consultation Center where you work?
3 A I believe he was a Program Director of
4 Developmental Disability section.
5 Q Was he above Mr. Slange, or at the same level or
6 below it?
7 A He was above Mr. Slange.
8 Q Now, at some point in time did you observe any
9 unusual behavior on the part of Mr. Hapkirk given
10 the fact that you were in a business setting with
11 him?
12 A What I recall is at one time I had hit Mr. Hapkirk
13 and since then he had become cold towards me.
14 Q What behavior of Mr. Hapkirk did you observe if any
15 with other people than yourself?
16 A He used to -- I've observed him pull one of the
17 employee's bra strap when he was walking behind
18 her. We were sitting in staffing at one time, and
19 I was in the middle, Mrs. Slange was on one side
20 and Mr. Hapkirk was on the other side --
21 Q (Interposing) Was she Mrs. Slange at the time?
22 A No, she was Debbie Millhouse. And he put his hand
23 behind me and pulled her panties. The elastic on
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the panties.

Q Okay. Did you and any of the women at LCC discuss Mr. Hapkirks behavior?

A We used to like, you know, we did not like it and there was discussion amongst --

THE COURT: No, I think what she discussed and what they said. She can say she had discussions period.

MS. RAVITZ: That's what I asked her.

THE COURT: Well she was going to go a little further than that.

MS. BERKERY: No, she went further.

BY MS. RAVITZ:

Q Miss Garg, during those discussion with the other women did you mention what you had observed with respect to Mr. Hapkirks?

A We just -- we used to talk about it.

Q Did -- did Mr. Slange ever speak to you about Mr. Hapkirks behavior?

A Just from my recollection, Mr. Slange did ask some females if they were being sexually harassed?

MS. BERKERY: I'm going to place an objection, because the question was what he said to her. And now

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prove the truth of the allegations and offered to prove the state of mind of my client with respect to Mr.

Hapkirk --

THE COURT: (Interposing) I'll sustain it.

MS. RAVITZ: And his advances towards her.

MS. BERKERY: Move to strike that gratuitous comment of advances towards the plaintiff. There's been no evidence of that.

THE COURT: All right. We'll strike that.

BY MS. RAVITZ:

Q Miss Garg, did Mr. Hapkirk ever come up behind you and -- and in an unconsented way touch you?

A Yes, he did.

Q Okay. Was this before or after you had observed him snapping someone's bra, pulling someone's pants and had discussions with other women about Mr. Hapkirk?

MS. BERKERY: Objection. Leading.

THE COURT: Sustained.

MS. RAVITZ: Before or after is not leading.

THE COURT: All right. I'll allow it.

MS. RAVITZ: Thank you.

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THE WITNESS: It was around the same time.

BY MS. RAVITZ:

Q And what did you do when he came up behind you --
tell the jury what happened.

A It was after the staffing, we were all meeting in
an office. I was going towards my office. I
believe Mr. Hapkirk was going towards Mr. Slange's
office. There's a long corridor. I felt somebody's
hand touching me, and I turned around and hit the
person.

Q Okay. How did you hit him?

A I just went with my hand. You know, just -- just
swung it whoever it was behind me.

Q Okay. And who did it turn out to be?

A It turned out to be Mr. Hapkirk.

Q Okay. Now what did you think that person was going
to do to you as they put their hand on the back?

MS. BERKERY: Objection. It calls for
speculation. Calls for hearsay. There's no foundation
for this. I mean, how would she know what someone else
was intending to do when they put their hands on.

THE COURT: Some else -- I'll sustain the

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THE COURT: You don't want to argue with me.

MS. RAVITZ: Okay.

BY MS. RAVITZ:

Q When you were being touched in the back, did you --
what was your impression whether there's something
improper or proper being done?

A I just -- it was a very automatic reaction on my
part. I felt somebody touching me, and I just
turned around and swung at him.

Q Okay. Did you at any time feel that -- was he in
the area of your bra when he touched your back?

A It was around my shoulder. It was like somebody
was touching me in the back, and that's all I
recall.

Q Okay. And it turned out to be Mr. Hapkirk,
correct?

A Right.

Q Okay. Now have you seen Mr. Hapkirk approach
people that way when you saw it -- I'm sorry. The
time that you observed Mr. Hapkirk snapping
someone's bra, was that like or unlike the way he
approached you?

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MS. BERKERY: Leading.

THE WITNESS: I don't remember --

THE COURT: Again, it's in that gray area.
I'll allow it.

THE WITNESS: All I recall is his touching me
from the back, and my swinging at him. I didn't know
who was in behind me, I just turned around and took a
swing at him.

BY MS. RAVITZ:

Q All right. How did he -- when you observed him
pulling someone else's bra, how did he go about
doing that?

A They were ahead of me. There was a lady ahead of
me and he was ahead of me too, and I just saw him
reach and pull the bra and snap it.

Q Mrs. Garg, did you ever -- when you -- what
happened when you turned around and hit him?

A I was taken aback. I was surprised, and I know he
started at me and I started at him, and then I went
to my office.

Q At that time, did you have any feelings about
having slugged the boss of your boss?

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MS. BERKERY: Objection, leading, mis-
characterization of testimony as now we're turning it
into slugging. I mean, --.

THE COURT: I'll sustain the objection.

BY MS. RAVITZ:

Q Did you hit him hard or soft?

A I don't remember that. I remember I took a swing
and I just -- my hand just went and I hit him.

Q Okay. All right. Did you report him to anyone?

A No.

Q Did you file a grievance against him for doing
that?

A No.

Q Did you report it to your Union representative at
that time?

A No, I did not do anything about it.

Q Did you discuss it with your husband?

A I told my husband. I was shaken, you know, because
I hit the boss' boss basically. So I was quite
shaken about the incident, and I did go home and
tell my husband.

Q Okay. Prior to that time, what had your

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relationship been like with Mr. Hapkirk?

A It was okay. I mean, he was a boss, and it was cordial relationship.

Q I'm sorry, I can't hear you.

A Worker boss relationship.

Q Would you say that you were cordial with him?

A Yes.

Q Subsequent to that incident, did -- was there any change in Mr. Hapkirk's behavior towards you?

A He became cold. It was -- there was a distancing between myself and Mr. Hapkirk.

Q Did you think anymore of the incident at that time?

A He did not repeat it.

Q And so did you think any -- think -- did you just dismiss it as something that he did and wouldn't do again?

A That's correct.

MS. BERKERY: Objection leading.

THE COURT: That one's leading. This questioning is going to be a long trial if we have to keep doing that. You've got to get out of that habit.

BY MS. RAVITZ:

1
2 Q Mrs. Garg, did there come -- you indicated that Mr.
3 Slange came to your house at -- at a certain point
4 in time?

5 A Yes.

6 Q Was he there more than once?

7 A At my house?

8 Q Yes.

9 A Yes.

10 Q Was he ever there with his girlfriend or fiancée or
11 wife, Deborah Millhouse-Slange?

12 A Yes.

13 Q Did there come a time that you had a conversation
14 with Mr. Slange regarding your promotions?

15 A Yes.

16 Q Okay. Do you remember the conversation in terms of
17 what Mr. -- what was said by you and what was said
18 by Mr. Slange?

19 A It was my husband who asked Mr. Slange why is my
20 wife not getting promotion --

21 MS. BERKERY: Objection hearsay. She said it
22 was my husband that asked.

23 THE WITNESS: I was there.

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THE COURT: It's still hearsay. I'll sustain
the objection.

BY MS. RAVITZ:

Q Did you and -- was the subject of your not getting
promotions discussed with Mr. Slange?

A Yes.

Q And what did Mr. Slange respond?

MS. BERKERY: Objection hearsay. She just
told us that it was her husband and Mr. Slange that had
this conversation.

THE COURT: Let's establish that it was her
talking to Mr. Slange and not her husband.

BY MS. RAVITZ:

Q Were you present when Mr. Slange -- did Mr. Slange
offer an opinion in your presence, in your hearing,
as to why you weren't getting promotions?

A Yes.

Q And what did Mr. Slange say?

A He said that Hapkirk does not like me.

MS. BERKERY: Your Honor, again, this is --
this is hearsay. This is the conversation between two
people. I'm not sure that she was saying she was

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present --

THE COURT: (Inaudible words: Attorney and Judge speaking at same time) -- These are admissions --

MS. BERKERY: That's fine if she was present.

I just want to make sure she was present that's all.

BY MS. RAVITZ:

Q Was there anything said in your presence about your ability to get future promotions, or ever getting promoted?

A From my recollection that was not discussed.

Q Other than the one instance when you hit Mr. Slange did you have any incident that you could remember where you --

THE COURT: (Inaudible words: Judge not near microphone.)

MS. BERKERY: I would say --

MS. RAVITZ: I'm sorry.

BY MS. RAVITZ:

Q Other than that one instance with Mr. Hapkirck when you hit him when he came up behind you, did you have any incident at all with him that you would regard as confrontational in nature? I'm sorry I

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

SHARDA GARG,)	
)	
Plaintiff,)	
)	
-vs-)	No. 95-3319 CK
)	Hon. Roland L. Olzark
MACOMB COUNTY COMMUNITY MENTAL)	
HEALTH SERVICES, a governmental)	
agency of MACOMB COUNTY, and)	
LIFE CONSULTATION CENTER, a)	
governmental agency and division)	
of MACOMB COUNTY COMMUNITY MENTAL)	
HEALTH SERVICES, Jointly and)	
Severally,)	
)	
Defendants.)	

JURY TRIAL

Proceedings had and testimony taken in the above
entitled matter before the HONORABLE ROLAND L. OLZARK -- Circuit
Judge, in the City of Mount Clemens, County of Macomb, State of
Michigan, on Thursday, April 2, 1998.

APPEARANCES: ALLYN CAROL RAVITZ (P-19256)
Attorney at Law

CHARLEEN O'NEILL (P-47650)
Attorney at Law

Appearing on behalf of the Plaintiff:

KAREN B. BERKERY (P-38698)
Attorney at Law

Appearing on behalf of the Defendants:

TABLE OF CONTENTSWITNESSES:Page

SHARDA GARG (Continued)
Direct Examination by Ms. Ravitz

4

1 Mount Clemens, Michigan

2 Thursday, April 2, 1998

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4 * * *

5
6 (WHEREUPON THE JURY
7 ENTERED THE COURTROOM.)
8

9 THE COURT: I guess we were on
10 direct examination here.

11 MS. RAVITZ: Okay.

12 THE COURT: You are still under
13 oath.
14

15 (WHEREUPON THE WITNESS
16 RETAKES THE STAND.)
17

18 S H A R D A G A R G,
19 the Plaintiff herein, being previously duly sworn,
20 testified on her oath as follows:
21

22 DIRECT EXAMINATION

23 BY MS. RAVITZ (Continued):

24 Q When we left off yesterday, we were discussing the Emergency
25 Services Liaison position, which I think you said was the --

1 Q Well, get back to that in a moment. We will get back to
2 that in a moment.

3 Again, did you send a copy of
4 your request of your application for this position to
5 Mr. Habkirk?

6 A Yes, I did.

7 Q And Mr. Cathcart?

8 A Yes.

9 Q And Mr. Cathcart was your supervisor at this time, correct?

10 A That is correct.

11 Q Let me go to the next position.

12 Would you take a look at
13 Exhibit 34? What is that position?

14
15 (WHEREUPON PLAINTIFF'S EXHIBIT
16 NUMBER 34 WAS MARKED FOR
17 IDENTIFICATION.)
18

19 A This is, again, a Therapist III position, out-patient
20 services.

21 Q Who previously held this position?

22 A Ms. Porkka.

23 Q And how long had she held the position?

24 A Over from the time I think it was about a year and a half.

25 Q Now, this time who got the position?

1 A Yes.

2 Q And who was her supervisor?

3 A Mr. Cathcart was still there, I believe.

4 Q Now, let me go back so we can finish filling that in.

5 In March of '86, who was your
6 supervisor, if you know?

7 A Could have been March of '86, I think it was Joanne Kent.

8 Q Okay. That's where we left off the last time.

9 Just finishing up down here for
10 the time being, were you -- you applied for program
11 supervisor for the job?

12 A Yes.

13 Q And who was your immediate supervisor?

14 A Tom Miller.

15 Q And what about when you applied for Stabilization Team
16 Therapist II, who was your supervisor?

17 A I believe it was Tom Miller and Keith Hoffman.

18 Q The supervisor was who?

19 A Keith Hoffman.

20 Q At that time? When did you go over there and did there come
21 a time that LCC dissolved?

22 A Yes.

23 Q And you remember what year that was?

24 A LCC was dissolved in about the end of 1994, and I moved to
25 North in 1995, I think it was November of 1995.

1 Q Did she get the position, DD Out-Patient Therapist?

2 A Yes.

3 Q And how long was she supervisor for?

4 A About a year and a half.

5 Q And who replaced her as your supervisor?

6 A Mr. Hibbard.

7 Q Okay. That was the position that he got?

8 A He got the position of DD Out-Patient Therapist III.

9 Q That was in December of '88?

10 A That's correct.

11 Q And prior to that time that Ken Cathcart became your
12 supervisor -- I am sorry.

13 That Margaret Porkka became your
14 supervisor, your supervisor was --

15 A Joanne Bielenin.

16 Q Thank you. That question has been answered. Your
17 supervisor then was Joanna Bielenin?

18 A That is correct.

19 Q Now, did there come a time when Kent Cathcart came into your
20 chain of command?

21 A Yes.

22 Q And when was that?

23 A I think it was sometime in September or October of 1986.

24 Q Okay. And did he remain your supervisor until you were sent
25 to First North?

1 MS. BERKERY: I would like to place
2 an objection. She testified she came in the chain of
3 command, now she's talking about supervisor classification.

4 Q (By Ms. Ravitz, continuing): Did he directly supervise you?

5 A He was the supervisor of the three supervisors, the three
6 was then supervising, and Kent was above that person.

7 Q Were there times that the three positions were vacant?

8 A Yes

9 Q And during those times, the times when Mr. Cathcart still
10 held the position that he had, did he directly supervise you
11 during those times?

12 A Yes.

13 Q Now, you said you moved to First North in what year?

14 A November of 1995.

15 Q And just prior to the break we were discussing a letter of
16 October 13th, 1994.

17 Your Honor wants me to put the
18 stipulation on the record or did you want to do that?

19 THE COURT: Well, it is my
20 understanding the parties are stipulating that sometime in
21 October of '94 was it that the Defendant was placed on
22 notice that through a letter from your office that Mrs. --
23 the Plaintiff filed -- she had a claim for basis of a
24 lawsuit for discrimination and/or retaliation; is that
25 correct?

1 testified earlier that you filed a grievance about having
2 two jobs. That was Exhibit Number 105 that you filed that
3 grievance in 8/8/85; is that correct?

4 A Yes, ma'am.

5 Q Okay. And that was a grievance just for doing the two jobs;
6 is that your testimony?

7 A Yes.

8 Q And can you indicate again for how many years you had
9 reviewed those two jobs prior pursuant to the grievance?

10 A From May of 1982 at least up until the time of the grievance
11 was filed, which was 8-85.

12 Q Now, again, that grievance was only on that issue; is that
13 correct?

14 A That is correct.

15 Q Did there come a time that you filed a grievance?

16 A Yes.

17

18

(WHEREUPON PLAINTIFF'S EXHIBIT

19

NUMBER 110 WAS MARKED FOR

20

IDENTIFICATION.)

21

22

23 Q And I would like to show you Exhibit Number 110. Can you
24 identify that grievance for us in terms of filing it and
when it was filed?

25

A It was filed by me on 2-2-87.

1 A That is the official grievance form dated 6-18-87.

2 Q Okay. Now, what was that grievance filed on behalf of?

3 A This was filed on -- when Margaret Porkka was given the
4 position over me, and that the contention was that manage-
5 ment I had non-union employees outside the CM system.

6 Q Was there any complaint in that grievance on the basis of
7 color, national origin?

8 A Yes.

9 Q Was that the first time that you had ever filed a complaint
10 on the basis of discrimination?

11 A Yes.

12 MS. BERKERY: Objection. I don't
13 see anywhere in here where it says anything about color in
14 here.

15 THE WITNESS: It says -- due to my
16 nationality.

17 THE COURT: Just a minute. Show it
18 to her. It is obvious that she doesn't see it and counsel
19 should see it.

20 MS. BERKERY: Yes, you were being
21 discriminated against because of national origin. It
22 doesn't say anything about color.

23 THE COURT: Let's use the specific
24 terminology used in the letter.

25 MS. RAVITZ: Okay.

1 candidates in the first step. Mr. Cathcart also indicated
2 that the selection process was objective, and there was no
3 administrative policy outlined for hiring people.

4 Q Are you finished?

5 A The fifth, Cathcart has been consistently denying promotions
6 and lateral transfers to various positions within the CMH
7 system, and discriminated due to her national origin.

8 Q Now, Mr. Palmieri --

9 A Palmieri --

10 Q Was he involved in the preparation of this grievance?

11 A Yes.

12 Q Do you -- did you agree with what was stated in the
13 grievance?

14 A Yes, I did.

15 Q Was the grievance denied?

16 A Yes.

17
18 (WHEREUPON PLAINTIFF'S EXHIBIT
19 NUMBER 118 WAS MARKED FOR
20 IDENTIFICATION.)
21

22 Q I'd like to show you Exhibit Number 118 and ask if you can
23 identify that for the record?

24 A This was the listing of the various Therapist II and
25 Therapist III positions who, after me from 1980 to 1985 and

1 testing, the psychological testing group. It says a task
2 group formed in March 1988 has been working to survey the
3 policies and procedures regarding psychological testing in
4 the system and to formulate recommendations. It is composed
5 of psychologists selected from the roster of people who
6 filled out the crew and this was in May of 1987.

7 I wasn't that knowledgeable of the
8 group representing the major agencies in the area. I
9 personally requested credentialing, so I had occasion and I
10 have not received a response.

11 Q Is that your letter?

12 A No. I sent in the response sending a form out. I filled it
13 out and sent it back to her.

14 Q Okay. Now, what's 126, Exhibit Number 126?

15 A It is a letter written to Mr. Cathcart from myself dated
16 August 4th, 1988.

17 Q And what does that letter say?

18 A In May of 1987, I completed the requesting forms for
19 clinical psychologist credentialing and returned it to
20 Mr. Lewandowski, a copy of this completed form is in my
21 possession; therefore, I am still pursuing a resolution of
22 the problem of my exclusion from the agency committee
23 comprised of all white male psychologists. Furthermore,
24 Mrs. Robinson informed me after my letter to you dated June
25 the 20th, 1988, that she had been selected as a committee

1 member.

2 Q So they did put a woman on the committee, right?

3 A That is correct.

4 Q It wasn't the staff psychologist?

5 A No.

6 Q And it wasn't the expert in testing?

7 A That's correct.

8 Q And --

9 MS. BERKERY: Objection. Leading,
10 your Honor.

11 THE COURT: Sustained.

12 Q (By Ms. Ravitz, continuing): Did they deny you -- did they
13 ever deny receiving it, your filling out the form?

14 MS. BERKERY: Who is they?

15 MS. RAVITZ: I am sorry.

16 Q (By Ms. Ravitz, continuing): Did Mr. Lewandowski continue to
17 insist that you never filled out the form?

18 A That was my understanding.

19 Q Okay. At some point, did you ever find the form that you
20 had filled out, did you ever find the form?

21 A Yes.

22 Q When was that, Mrs. Garg? At the time this occurred?

23 A Yes, it was right after when they kept saying I did not
24 return the form. I looked for it and I found it.

25 Q He said twice he had sent the form and you hadn't filled it

1 out?

2 A That is correct.

3

4

(WHEREUPON PLAINTIFF'S EXHIBIT

5

NUMBER 294 WAS MARKED FOR

6

IDENTIFICATION.)

7

8

Q Would you identify Exhibit Number 294?

9

A This is a form that says Clinical Psychologists Credentialing, Macomb County, CMH.

10

11

Q Mrs. Garg, is that the form that you were referring to that you filled out requesting --

12

13

A Yes.

14

Q To be part of the committee?

15

A Yes.

16

MS. BERKERY: Your Honor, there is

17

no date on this form.

18

MS. RAVITZ: That is the form she

19

filled out.

20

Q (By Ms. Ravitz, continuing): There was a clinical -- what is the title of this form?

21

22

A Clinical Psychologists Credentialing, Macomb County, CMH.

23

24

Q And in the letter dated August 1st, 1988, what do you reference the form that you filled out?

25

A In May of 1987, I completed the requesting form, Clinical

1 A Yes.

2 Q And that was several months before you filed your
3 discrimination grievance in 1987?

4 A Yes.

5 Q Did you and Miss Porkka ever have any discussions regarding
6 your being fired?

7 A Yes.

8 Q Would you please relate to the jury what Miss Porkka told
9 you?

10 A She told me that she was instructed by Mr. Cathcart to fire
11 me.

12 Q Was this after you filed your grievance?

13 A I don't remember that exactly, but I was told by her that
14 she was instructed to fire me.

15 MS. BERKERY: Your Honor, I object.
16 Obviously it is hearsay. Apparently she is relating what
17 Mr. Cathcart supposedly told Miss Porkka and then told the
18 Plaintiff.

19 MS. RAVITZ: This is the direct
20 supervisor telling her she had directions to fire her. It
21 is an admission of the Defendant.

22 MS. BERKERY: But she was not
23 saying it wasn't to fire her, she said 'Mr. Cathcart told me
24 I wanted -- he wanted to fire her.

25 MS. RAVITZ: Your Honor, it is

1 MS. BERKERY: Thank you. Move to
2 strike it, also.

3 THE COURT: I will.

4 MS. RAVITZ: The Defendant will
5 provide us with the address of Miss Porkka so we can
6 subpoena her.

7 MS. BERKERY: I provided the
8 personal file of --

9 THE COURT: We will take a ten-
10 minute break and you two can talk about it. The jury step
11 outside, please.

12
13 (WHEREUPON A RECESS
14 WAS TAKEN.)
15

16 Q (By Ms. Ravitz, continuing): Mrs. Garg, did you get along
17 with Mr. Cathcart?

18 A Not really, no.

19 Q Can you tell me some of the circumstances that have occurred
20 which caused you to form the opinion that you and he didn't
21 get along?

22 A He used to treat me very differently from all the other
23 staff. I would be, let's say two minutes late sometimes due
24 to traffic, and he would reprimand me in the presence of
25 others, and would see other people walking in whenever they

1 wanted to. I have a diary when he came and went. He always
2 used to work at the shop. I recall he followed me to the
3 workshop at one time to see if I was cheating on the way to
4 the workshop, and the evening when we would get ready to
5 leave, all of us congregated at the exit about five minutes
6 early, and he would look at me and say don't you have
7 anything to do?

8 Again, it became like a joke with
9 the other staff members when we would go in making fun of
10 it.

11 Q Making fun of what?

12 A Just hard for me to talk about it. I am sorry. I just
13 can't talk about it.

14 THE COURT: Excuse the jury for a
15 moment.

16
17 (WHEREUPON THE JURY
18 WAS EXCUSED.)
19

20 THE COURT: I was concerned, that
21 you would have an emotional breakdown in the courtroom. If
22 this is going to be a common occurrence, maybe we should
23 think of some other procedure on getting the evidence to the
24 jury.

25 MS. RAVITZ: What do you mean?

1 THE COURT: Well, she can't stay on
2 the stand and testify at the trial without crying because of
3 a lack of composure.

4 I will call the jury back and
5 let's proceed with the questions and see if you can control
6 your composure.

7 THE WITNESS: Yes.

8 THE COURT: Let's have the jury.

9
10 (WHEREUPON THE JURY
11 ENTERED THE COURTROOM.)
12

13 Q (By Ms. Ravitz, continuing): Mrs. Garg, take your time. You
14 indicated that it was a joke among the staff?

15 A Yes. I remember one time they were all going to go out for
16 lunch, and one of my colleagues of mine were leaving like
17 15 minutes early so they could get a seat in the restaurant,
18 and he came up to me saying you better go on time, we don't
19 want any trouble because of it.

20 I recall the time my son was
21 admitted to being in a certain program which is kind of a
22 medical program, and I told him he is home and the comment
23 was made, I don't know how many doctors we need. I took
24 that very personally because he said, I don't know how many
25 Indian doctors we need. I took that, very personally. My

1 son is not Indian. He was born in America like everybody
2 else, so they were -- I remember one time I went out to see
3 a rainbow that was in the air, a big rainbow in the sky for
4 just two minutes and he screamed at me and told me to go
5 back to my office.

6 I saw other people go out and
7 smoking cigarettes and every time I started to eat some-
8 thing, some comment would be made. People would have potato
9 chips and pop and nothing would be said.

10 Q In these interviews for jobs that you applied for during the
11 time that he was in your chain of command?

12 A Yes.

13 MS. BERKERY: Objection. There has
14 been no testimony that Mr. Cathcart at all was at these
15 interviews. She testified before when they interviewed her
16 on some of these jobs, she never mentioned Mr. Cathcart.

17 MS. RAVITZ: We are talking about
18 interviews for these jobs.

19 Q (By Ms. Ravitz, continuing): I thought you said something
20 about keeping a diary?

21 A Yes.

22 MS. BERKERY: I would object to the
23 diary.

24 MS. RAVITZ: Can I ask the
25 question?

THE COURT: All right.

1
2 Q (By Ms. Ravitz, continuing): You said something about
3 keeping a diary. When did you start keeping a diary?

4 A I started keeping a diary for a long time. I would write
5 instances which sort of stuck out in my mind as being
6 unusual.

7 Q And when did you start doing that? Was it before
8 Mr. Cathcart was your boss or after?

9 A It was before. I used to write down things that, you know,
10 I could not really understand and just go over them before I
11 made conclusions why things were being said to me.

12 Q Did you save that diary?

13 A Some of them I have in my possession, some of them I lost.

14 Q Did you keep any of the notes about what was happening at
15 LCC?

16 A I would write down things I still did write down things that
17 bothered me on a piece of paper and sometimes I put them in
18 my diary. Sometimes I just put the paper in a drawer.

19 Q And these are diaries or diary entries that they made around
20 the same time that you made these notes?

21 A I had a book in my purse. The dates, I just wrote down the
22 dates that the person said them to me in the diary. On this
23 day this happened, it was like it was in a diary or a little
24 book which I would write down my notes.

25 Q This was done around the time that these things happened?

1 A Right.

2 Q Did you keep a record as to when other people was coming in
3 and leaving?

4 A Yes. For a short period of time I did.

5 Q And you remember what your notes reflect?

6 A Just, you know, I got reprimanded for coming in two minutes
7 late and I watched people come and go as they went out as
8 they pleased, so I started writing down what time the other
9 people were walking into the clinic.

10 Q Was it your -- when did you usually arrive at the office?
11 Were you on time, late?

12 A I always tried my best to be on time. I was hardly ever
13 late.

14 Q I would like to have you identify, if you would -- first,
15 would you identify Exhibit 121?

16 MS. BERKERY: Your Honor, these
17 are --

18 MS. RAVITZ: Can she identify it
19 first for the record, your Honor? Could she do it before
20 the objection is made?

21
22 (WHEREUPON PLAINTIFF'S EXHIBIT
23 NUMBER 121 WAS MARKED FOR
24 IDENTIFICATION.)
25

1 THE WITNESS: These are some of the
2 notes from the so-called diary of mine.

3 Q (By Ms. Ravitz, continuing): Would you identify it?

4 MS. BERKERY: Your Honor --

5 MS. RAVITZ: Just identify it for
6 the record, your Honor.

7 THE COURT: Let's just wait before
8 we put -- I am going to hold it for a moment if you are
9 seeking a limited admission, I am going to ask for briefs.
10 Let's stay away from them for the time being.

11 MS. BERKERY: Thank you, your
12 Honor.

13 THE COURT: She can use her notes
14 for refreshment purposes. If you want to have them admitted
15 into evidence, you are going to give me some case law on
16 that issue.

17 MS. RAVITZ: All right.

18 Just for the record, we are going
19 to show you what she was referring to.

20 THE COURT: I don't want to bandy
21 it about in front of the jury until I see where you are
22 going. We are going to break shortly. You are going to
23 have a nice afternoon to go and do a lot of work. So when
24 we start doing something along the line of legal research
25 and doing things that will shape up for tomorrow and the

1 circumstances of discrimination and mistreatment that you
2 suffered while you were at the LCC?

3 A No.

4 Q Are there any documents that you have that refreshes your
5 memory as to some of the incidents that occurred?

6 A Yes, just from the notes that I kept.

7 Q Okay. You have in your hand Exhibit Number 121. Those are
8 some of the notes that you have?

9 A Yes. Just a few of them are listed here.

10 Q Okay.

11 THE COURT: Now, she's got to be
12 able to put the notes aside and she has an independent
13 recollection. She can't read from the notes, that is what
14 the objection would be.

15 MS. RAVITZ: Right.

16 THE COURT: Once she has reviewed
17 the notes, then she can put them aside and you can ask her
18 questions about her recollection at the time.

19 Q (By Ms. Ravitz, continuing): Now, will you tell us what
20 happened such as the time and places that you can give dates
21 of these events?

22 MS. BERKERY: Your Honor, I think
23 Mrs. Garg is reading from the notes and I can't see her very
24 well.

25 THE COURT: After reviewing them,

1 then, she can put them aside and you should let counsel know
2 that you have reviewed them and refreshed your memory,
3 depending on the answer which we assume would be probably
4 yes, then the next question is now, do you recall -- do you
5 remember some times and places when certain things happened,
6 assuming the answer yes, give it to us without looking at
7 your notes and times and places.

8 Now, that is the procedure for
9 refreshing recollection. Let's follow that.

10 Q (By Ms. Ravitz, continuing): Mrs. Garg, take a look at the
11 notes for a moment and review those notes.

12
13 (WHEREUPON A SHORT
14 PAUSE WAS TAKEN.)
15

16 THE COURT: Have you completed your
17 review?

18 THE WITNESS: Yes.

19 THE COURT: Now you can proceed.

20 Q (By Ms. Ravitz, continuing): Mrs. Garg, in reviewing those
21 notes, was your memory refreshed as to any particular
22 instances?

23 A Yes, most of them are about problems coming in after the
24 clinic and what time they were coming in, what time was
25 lapsing about coming in late, coming back from lunch.

1 MS. BERKERY: Your Honor, I believe
2 Mrs. Garg reiterated what is in her notes.

3 THE COURT: That's what she
4 testified to already. You want a motion of specificity?

5 Q (By Ms. Ravitz, continuing): Mrs. Garg, you remember when
6 those notes that you have when the first notes were sent and
7 what year?

8 A They were around '94, '95; sometime in '94.

9 Q Okay. You remember when the earliest notes in '94, 1994?

10 A No, I don't.

11 Q Have you looked at your notes or would you think that they
12 would refresh your memory?

13 THE COURT: I am going to break for
14 now to give you the opportunity to read your notes and
15 refresh your memory, and then after that when we come back
16 tomorrow, if you want to ask her when she did it with the
17 notes over your discussions, about that time she ought to
18 have time to sufficiently review them and her memory should
19 have been refreshed.

20 MS. RAVITZ: Okay.

21 THE COURT: Ladies and gentlemen of
22 the jury, we will break for today and I caution you not to
23 discuss this case with anyone and if anyone approaches you
24 and says anything, you report the incident to me as soon as
25 you return tomorrow morning at 9 a.m. and we can follow the

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

SHARDA GARG,

Plaintiff,

-vs-

MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, a governmental
agency of MACOMB COUNTY, and
LIFE CONSULTATION CENTER, a
governmental agency and division
of MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, Jointly and
Severally,

Defendants.

No. 95-3319 CK
Hon. Roland L. Olzark

JURY TRIAL

Proceedings had and testimony taken in the above
entitled matter before the HONORABLE ROLAND L. OLZARK -- Circuit
Judge, in the City of Mount Clemens, County of Macomb, State of
Michigan, on Friday, April 3, 1998.

APPEARANCES: ALLYN CAROL RAVITZ (P-19256)
Attorney at Law

CHARLEEN O'NEILL (P-47650)
Attorney at Law

Appearing on behalf of the Plaintiff:

KAREN B. BERKERY (P-38698)
Attorney at Law

Appearing on behalf of the Defendants:

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DIRECT EXAMINATION

BY MS. RAVITZ (Continued):

Q When Teri Hibbard left the position of the DD Out-Patient Therapist III, he had just completed a stint of being your supervisor; is that correct?

A Yes.

Q Did you have any discussions with him at any point in time as to who he had recommended to fill the position?

A After he had left the agency, I was trying to get together some people at my house for lunch with him there. I called him at the time and he told me on the phone that he had recommended me for the promotion, but he said, I don't think it is going to do any good because of the background. I viewed it to my being ethnic.

MS. BERKERY: Your Honor, I am going to place an objection as to whether or not what she believed. She can testify as to whether or not Mr. Hibbard viewed it because she was ethnic. I think that is hearsay.

She is purely speculating, and this is -- there is no foundation for that.

MS. RAVITZ: He was her supervisor. This is the type of person we are not allowed to talk to in advance of taking depositions or seeing them in court because what they say can bind the Defendant, and, therefore, anything that he says regarding her promotion or

1
2 was instances that had happened to you that you felt were
3 unfair and at LCC and the Defendants and you were asked to
4 review your notes when you indicated that you didn't
5 remember everything that you had some notes that you might
6 use to refresh your memory.

7 My question is: At this point in
8 time, if there are any instances that you now remember
9 having looked at in your notes a couple places and could you
10 indicate from that material to the jury?

11 A The notes were like going back from 1992. I had sporadic
12 notes, '92, '93, '94. There was -- I submitted most
13 recently '94 and '95. Those are the ones I read, and at
14 that time my supervisor was Terry Falasa. She was promoted,
15 and the notes about how she would come into my office, throw
16 files on my desk, onto my face --

17 MS. BERKERY: Object. The question
18 was if there were any instances she recalled regarding
19 Mr. Cathcart.

20 MS. RAVITZ: My question was unfair
21 treatment of her at LCC or by the Defendant.

22 MS. BERKERY: By the Defendant, now
23 you mean Terry Falasa?

24 MS. RAVITZ: The Defendant in this
25 case.

THE COURT: I think we are unclear.

1
2 You are zeroing in on the other
3 question and not you got another person here who's position
4 and name I guess is unknown to us, at least since we were
5 concentrating in an area yesterday when you are naming a
6 person and also the person was in a position that would help
7 circumvent hearsay.

8 Q (By Ms. Ravitz, continuing): Okay. First of all, did you
9 discover any of those notes, anymore references to the
10 extent that you reviewed them to Kent Cathcart? You
11 indicate what notes you haven't testified to?

12 A Most of the notes were about my timing, I would come in at
13 8:32 and the next day I would be reprimanded. People come
14 in at 8:40. They come in at 9:00.

15 THE COURT: I think she testified
16 to that yesterday. Now, what we are looking for is times,
17 dates and so that she can be cross examined. I mean, in
18 speaking in generalities, what the problem we had yesterday.

19 Now, she got a specific date and
20 time and place, that's what we are looking for when you
21 refresh your memory, so absent that, I wouldn't allow any
22 further testimony.

23 Q (By Ms. Ravitz, continuing): Is there additional instances
24 that you remember?

25 A I remember a lot of instances, but the dates I do not
specifically remember. I didn't write down the dates and

1 times in my diary. I didn't write down as to the time it
2 happened. I do not specifically remember dates. I remember
3 the instances.
4

5 Q Now, other than those what you've testified to yesterday,
6 were there any other instances that you wrote down in your
7 notes?

8 A I have.

9 Q About Kent Cathcart?

10 A I wrote down things that happened in staffings. I would
11 present a case, and I would be shot down; other people
12 presented would be okay.

13 Q Okay. You were shot down?

14 A If other people presented the case in staffings.

15 Q Were you allowed to present your case?

16 A I was allowed to present my case, but I would either receive
17 criticism or totally ignored people. The other people would
18 not.

19 Q I am sorry. I can't hear you.

20 A We used to have staffings on a weekly basis, and at that
21 time we would present cases and I would give something to
22 the case. I would either be ignored or reprimanded in those
23 staffings. Other people's suggestions were accepted by him.
24 Just in the passing, I would be going down the hall for
25 something and he would practically at all times make
remarks, don't you have anything to do? Anything better to

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Q Okay. And he was for the whole Macomb County Community Health Center?

A Yes.

Q And do you know what personnel department developed the position and the job description that was used to fill these positions? Was it done at LCC or was it done at the Macomb County Community Mental Health Services?

A It was done by the Community Health Administration.

Q Now, with respect to the position of whether or not per the union you had a right to be promoted or laterally took precedence or anything like that? Did that rule ever change?

A Yes.

Q When did that rule change, if you remember?

A I think about two years ago they changed the rule that promotions, the lateral transfers would take precedence over the promotions.

Q Was there ever a time that you applied for a position that you believe that the union -- the union rule could not be followed?

A The last time I applied for stabilization?

Q Yes.

A That was a non-union job when I applied for it.

Q Okay.

A Then, now I was denied -- it was a union position, I would

1
2 determine whether this was some great scheme on the part of
3 the Defendants to keep her from applying, so to speak, keep
4 her in her place. All right.

5 Q (By Ms. Ravitz, continuing): When you went over to First
6 Intake North, who was your supervisor?

7 A Mr. Don Miller.

8 Q Prior to him becoming your supervisor, what position did he
9 hold?

10 A He was a Therapist II.

11 Q And how did he get the Therapist II position?

12 A He was reclassified.

13 Q You indicated you went to First North in November of 1995,
14 correct?

15 A That is correct.

16 Q You remember when Mr. Miller's position was reclassified
17 from a II to a III?

18 A I recall it was just prior to my going there.

19 Q Do you remember the specific date?

20 A No.

21 Q Is there a document that -- are you aware if you look in
22 refreshing your memory as to the dates?

23 A Yes.

24 MS. BERKERY: I object to the
25 relevance that this occurred prior to or even going over
there. She testified this job had been reclassified before

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A No.

Q How much advance notice did you have that you were being transferred to a new facility prior to being transferred?

A About six months, I would say.

Q You knew that you were going to be going over to First North?

A That is correct.

Q Have you ever been at the facility before?

A Once for five minutes.

Q Now, when you came to that facility, had you been assigned an office?

A Yes.

Q And who was your supervisor when you were assigned that office?

A When I moved First North, I was just given an office. The supervisor was a T-III, Mr. Miller.

Q And who gave you that office?

A Mr. Miller.

Q And would you describe to the jury what your office was like?

A The office was -- before the office was assigned to me, it was a storage place, and it was -- there was no carpeting. The floor had scruff marks, black scruff marks which I tried to remove, and couldn't. There were no windows. It was right next to the bathroom, and I had taken my old

1
2 the reference to the mediation in this case.

3 THE COURT: Well, I don't find that
4 it is prejudicial, but certainly inappropriate. I will
5 strike it and you should give us a time frame, not an event.

6 MS. RAVITZ: Okay.

7 THE COURT: But a date.

8 MS. RAVITZ: Okay.

9 Q (By Ms. Ravitz, continuing): Mrs. Garg, in May of 1996, was
10 there any change in your office location?

11 A Yes, I was moved to this new office that I currently have.

12 Q Prior to that time, had anyone offered to move your office?

13 A I had requested that several times.

14 Q Did anyone agree to move you?

15 A No.

16 Q Have you heard people in the course of discovery in this
17 case, represent that they told you that they would move you
18 and you said no?

19 MS. BERKERY: Objection. Objection
20 to the form of the question.

21 THE COURT: Sustained.

22 Q (By Ms. Ravitz, continuing): Mrs. Garg, is there some sort
23 of book or paper or pamphlet that indicates who is located
24 at what time and treatment throughout the County of Macomb?

25 A They just sent us a listing of all the people in the Macomb
County Mental Services.

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Q Do they list all the therapists at First North?

A Yes.

Q Are you listed among those therapists?

A No.

Q Do they list the clerical help?

A Yes.

Q Were you listed?

A With the clerical staff.

Q Anyone commented to you about that?

A Yes.

Q And what kind of comments have you heard?

A Now that I was being demoted to the clerical level.

MS. BERKERY: Objection. I don't know who it is that supposedly said it.

THE COURT: Hearsay. I will sustain the objection.

MS. RAVITZ: It doesn't go to the truth of the matter to show the type of damage that she suffered in terms of being humiliated.

THE COURT: Bring those people in and she will be allowed to cross examine to see if there are really damages, sustain the objection being offered for the truth of the same.

MS. RAVITZ: All I am saying, these are --

1
2 THE COURT: I will sustain the
3 objection.

4 Q (By Ms. Ravitz, continuing): As a result of this publica-
5 tion, did you suffer any emotional damage?

6 MS. BERKERY: Objection. Leading.

7 THE COURT: I guess you would say,
8 what, if any, to cure the problem.

9 Q (By Ms. Ravitz, continuing): What, if any, emotional effect
10 did being published this way with respect to you?

11 A Just that I believe I had been ridiculed by people.

12 MS. BERKERY: Your Honor --

13 THE COURT: Strike it as hearsay.

14 Q (By Ms. Ravitz, continuing): How did it make you feel?

15 A I don't know how to -- you mean when you are being
16 changed -- when you are being demoted from therapist to
17 clerical employee classification as a therapist, then I
18 would say --

19 MS. BERKERY: Your Honor, this
20 woman has not been demoted.

21 MS. RAVITZ: By being listed under
22 the title that she was used to, I think she can testify in
23 that regard.

24 THE COURT: Proceed.

25 Q (By Ms. Ravitz, continuing): When you came to First North,
you said your immediate supervisor was Tom Miller. Who was

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

SHARDA GARG,

Plaintiff,

-vs-

MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, a governmental
agency of MACOMB COUNTY, and
LIFE CONSULTATION CENTER, a
governmental agency and division
of MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, Jointly and
Severally,

Defendants.

No. 95-3319 CK
Hon. Roland L. Olzark

JURY TRIAL

Proceedings had and testimony taken in the above
entitled matter before the HONORABLE ROLAND L. OLZARK -- Circuit
Judge, in the City of Mount Clemens, County of Macomb, State of
Michigan, on Tuesday, April 7, 1998.

APPEARANCES: ALLYN CAROL RAVITZ (P-19256)
Attorney at Law

CHARLEEN O'NEILL (P-47650)
Attorney at Law

Appearing on behalf of the Plaintiff:

KAREN B. BERKERY (P-38698)
Attorney at Law

Appearing on behalf of the Defendants:

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1 A He was not my husband at the time.

2 Q Right. The position that you were at -- you have, was he --
3 the T-III position that you had was classified, it wasn't
4 posted?

5 A It was requested from when I was working there.

6 Q Do you remember when -- do you remember the evening at the
7 Garg home or premises, perhaps it was your house when your
8 husband responded to a question about why Sharda Garg wasn't
9 getting promoted? Remember that evening?

10 A They were at the house a lot. I don't remember any specific
11 night.

12 Q You remember your husband ever indicating to Mr. Habkirk --
13 that Mr. Habkirk did not like her and she would never get
14 promoted?

15 A No.

16 MS. RAVITZ: I have no further
17 questions.

18
19 CROSS EXAMINATION

20 BY MS. BERKERY:

21 Q Never observed Mr. Habkirk -- you ever hear Mr. Habkirk --
22 let me start over again. Mr. Habkirk ever sexually abuse or
23 harass anyone, did you ever see it?

24 A No.

25 Q You feel he sexually harassed you?

1 the foundation for the reading of the deposition.

2 THE COURT: See whether you read
3 the depositions and you can ask her the question and if she agrees
4 with what the deposition says, then we don't need you to
5 refer to the deposition. If she changes the answer from the
6 deposition, then you can use the deposition, as I said, for
7 either refreshment of memory or impeachment purposes.

8 Q (By Ms. Berkery, continuing): Isn't it true that at your
9 deposition the only two people that you testified you
10 believe retaliated was Mr. Cathcart and Mr. Habkirk?

11 A Yes.

12 Q I am going to ask you to look at your deposition from your
13 deposition taken on December the 1st, 1995; is that correct?

14 A Yes.

15 MS. RAVITZ: Which date?

16 MS. BERKERY: December 1st, 1995.

17 MS. RAVITZ: Also taken on

18 September 12th?

19 MS. BERKERY: I am talking about --
20 this one is the first one and I am going to refer your
21 attention to Page 271, Line 21 and 22. You read that
22 through Page 274 and take a look at it.

23 MS. RAVITZ: Sorry, what page is
24 that?

25 MS. BERKERY: That's 271 to 274.

Page 271 the question is:

1
2 "Q Now, you claim that it was management and I would like
3 to know if there is any particular person that you
4 believe in management retaliated against you?

5 A Mr. Cathcart.

6 Q Anyone else?

7 A I could not give specific names at this time, but if
8 there is anything to refresh my recollection --

9 Q No.

10 A Okay.

11 Q Now, Mr. Habkirk ever made any comment to you that
12 would lead you to believe that he was doing -- it was
13 to discriminate against you based on your being a
14 foreign national origin?

15 A No, he has not.

16 Q Has he ever made any comments to you regarding your
17 color?

18 A No.

19 Q You told me that you were interviewed by Margaret
20 Demery, correct, Doctor Demery?

21 A Yes.

22 Q Do you know whether she is aware that you filed a claim
23 of discrimination in 1987?

24 A No, I don't.

25 Q Has she ever made any comments to you regarding your

1 get out of the union at one time, but --

2 Q Okay. That was an individual?

3 A As far as I recall, yes.

4 Q Okay. Now, let's run through one of these positions with
5 the lateral position for Epilepsy Counselor position in 1983
6 was that lateral?

7 A Yes.

8 Q That would be the same thing for the Epilepsy Counselor
9 position then, in 1985, right?

10 A That is correct.

11 Q Now, Family Support Coordinator, that was a lateral for you?

12 A Yes.

13 Q And the MI Adult Partial T-II, that would be a lateral,
14 right?

15 A Yes.

16 Q Now, the MI Children's T-II, that was a lateral, right?

17 A That is correct.

18 Q That would also be true for MI Adult Partial II, right?

19 A That's correct.

20 Q Okay. The rest of these positions, what you call
21 promotional positions T-III or other jobs; is that correct?

22 A That is correct.

23 Q Now, you testified that Mr. Hibbard got a lateral when he
24 got the second DD Out-Patient II job or Partial-Day
25 position, correct, you testified that he was the T-III and

1 had the Out-Patient, the T-III position and then he also
2 moved laterally at the T-III to the Partial-Day Therapist
3 III, correct?

4 A I know he moved from one to the other.

5 Q At that time, neither one of the III positions were in the
6 union, correct?

7 A From my recollection, there was a dispute about whether the
8 III was or was not in the union. The union always told us
9 you are in the union; management said they were not. This
10 was an ongoing dispute.

11 Q At this time, do you have any information or if you didn't
12 know whether or not those two positions were in the union or
13 not, just tell me?

14 A I can only repeat what I was told by the union because we
15 did question them and they said it was -- they said it was
16 in the union, it was in the bargaining unit.

17 Q And then management was saying they are not in the union?

18 A That is correct.

19 Q Just so I am clear, you didn't apply for any other positions
20 prior to May of 1983, correct?

21 A That's correct.

22 Q I want to bring your attention to the grievances that you
23 filed in 1987 with regard to Margaret Porkka's position and
24 Teri Hibbard's position, correct?

25 A That is correct.

1 Q You testified that you filed one of those grievances; you
2 allege that you were discriminated against as part of the
3 grievance based on your national origin, correct?

4 A The one Margaret Porkka got?

5 Q At that time did you receive any response from anyone with
6 regards to the allegations of discrimination from
7 management?

8 A Yes.

9
10 (WHEREUPON DEFENDANTS' EXHIBIT
11 NUMBER 237 WAS MARKED FOR
12 IDENTIFICATION.)
13

14 Q I show you what has been marked as Defendant's Exhibit 237.
15 Is this the response that you received?

16 A Yes, ma'am.

17 Q It is from -- it is for the record, what?

18 A It is a letter dated July the 6th, 1987, myself, reference
19 grievance promotion, and it is signed by Mr. Slaine.

20 Q Could you read the third -- strike that.

21
22 With regard to the allegations of
23 discrimination, Community Mental, support and practices,
24 Macomb County, Equal Opportunity Employer, and will not
25 discriminate based on issue of race, national origin or
handicap. There is evidence that this policy has been

1 Mr. Cathcart.

2 Q Terry Falasa wanted to change your hours, and you discussed
3 it with Mr. Cathcart?

4 A That's right.

5 Q We know that Mr. Cathcart went to bat for you.

6 A Mr. Cathcart said since it was just three more months left
7 for your flex-time, go ahead and do it, we are not going to
8 worry about it.

9 Q So, in other words, you got the flex hours you wanted?

10 A Yes.

11 Q Isn't it true Mr. Slaine had also earlier provided you flex
12 hours years before?

13 A I don't remember that.

14 Q Okay. Now, you've testified also about this situation where
15 you wanted to get on some committee with Mr. Lewandowski?

16 A That is correct.

17 Q And do you remember that when you didn't get on the
18 committee the way you would like, you went to Mr. Cathcart
19 about it, correct?

20 A Wrote a letter to him.

21 Q And did Mr. Cathcart, if you know, did he take any
22 initiative on your behalf with Mr. Lewandowski?

23 A Not that I remember.

24 Q I show you what was previously marked as Plaintiff's Exhibit
25 Number 125. Tell me who is the letter addressed to?

1 A The letter is addressed to Mr. Cathcart, copy to Mr. Lefler
2 (phonetic), signed by Lewandowski.

3 Q What is the letter about?

4 A To say that March 1988 -- has been working to survey the
5 policy and procedures regarding psychological testing and
6 systems and formulate recommendations, and it says here what
7 I personally requested in a summary from Sharda Garg on two
8 occasions I have not received a response.

9 Q Okay. That was Mr. Lewandowski's response to Mr. Cathcart
10 and Mr. Habkirk about your wanting this psychological
11 testing group?

12 A That is correct.

13 MS. RAVITZ: Excuse me, your Honor.
14 The letter is a letter that could have been responded to by
15 Mrs. Garg for someone else?

16 MS. BERKERY: The letter speaks for
17 itself. I am saying it is addressed to Mr. Cathcart,
18 Mr. Habkirk from Mr. Lewandowski about her client about not
19 getting the committee. That's all.

20 Q (By Ms. Berkery, continuing): Do you know if Mr. Cathcart
21 had any discussions with Mr. Lewandowski about you not being
22 on that committee?

23 A All I know, eventually the problem was resolved, and --

24 MS. BERKERY: I would move to
25 strike as being nonresponsive. I asked you if you know

1 whether or not Mr. Cathcart went to Mr. Lewandowski on your
2 behalf regarding the meeting on that committee?

3 THE WITNESS: No, I don't.

4 Q (By Ms. Berkery, continuing): How about Mr. Habkirk, he went
5 on your behalf to see if you could get to this committee?

6 A No.

7 Q Now, you testified that you were not allowed to go to
8 certain conferences and then subsequently you were -- your
9 counsel introduced a number of correspondences or seminars
10 that you attended, which conferences is it that you didn't
11 go to?

12 A I was denied the opportunity to go to the conference by
13 Terry Falasa on two different occasions.

14 Q Now, has Terry Falasa -- is this a man or woman? This is a
15 woman?

16 A That is correct.

17 Q This is when she was your supervisor?

18 A Yes.

19 Q She ever make any racial remarks to you?

20 A Not to my face, she did not.

21 Q Ever make any remarks regarding your foreign national
22 origin?

23 A I don't think people come to me and make comments. What
24 they do to me they do it like in the back.

25 Q So, Miss Falasa did not like you?

1 A I did not say that.

2 Q Okay.

3 A I did not say specifically that she did not like me.

4 Q What is it that you testified to earlier? Why is it you
5 believe she didn't let you go to these conferences?

6 A All I can tell you is the fact I asked to go to two
7 different conferences, and she gave me a response. One was
8 at lunch and said, no, you can't go and the other she said
9 there were people selected to go to that and you are not one
10 of them.

11 Q Did you have any evidence that Miss Falasa didn't let you go
12 to the conferences because of your national origin?

13 A She did not tell me she can't go.

14 Q I am just looking for any evidence. Any evidence that she
15 made about the opportunity to go to conferences because of
16 your color?

17 A People don't come to me and say you are not non-white,
18 therefore, you can't do it.

19 Q You also testified that you went to numerous conferences,
20 correct?

21 A This is before Terry Falasa was my supervisor, yes, I did.
22 I still do. I still go to conferences.

23 Q I was going to get to that. You have got numerous
24 conferences that you went to, then, correct?

25 A No, I have --

1 Q All right. Isn't it true that you went to conferences in
2 1992 for attention deficit and hyperactive disorders?

3 A I don't remember, but I could have.

4 Q And in October of 1993 you participated in a conference on
5 current issues in autism, remember that one?

6 A Yes.

7 Q And in November of 1993 you went to a conference regard-
8 ing -- title of the training was Brief Therapy?

9 A Yes.

10 Q And in 1994, during the time period that Miss Falasa was
11 your supervisor, you went to a conference called Obsessive,
12 Compulsive Disorders, correct?

13 MS. RAVITZ: I object to the
14 question. I mean, she is asking her if she went to a
15 conference or asked my client to confirm that Miss Falasa
16 was her supervisor during that time.

17 Q (By Ms. Berkery, continuing): Was she your supervisor in
18 1994?

19 MS. RAVITZ: What time?

20 THE WITNESS: There were several
21 at Macomb County Community Mental Health that had been had,
22 and there were other conferences that maybe had to get
23 permission from the supervisor.

24 Q (By Ms. Berkery, continuing): You are not answering my
25 question.

1 A I am answering the question the best I can. I cannot say
2 yes or no because certain conferences I did not meet with my
3 supervisor's permission.

4 MS. BERKERY: Your Honor, I asked
5 whether Terry Falasa, her supervisor in 1994 --

6 THE WITNESS: She became my
7 supervisor in November or September of 1994.

8 Q (By Ms. Berkery, continuing): Did you not attend a
9 conference in November -- November 30th, 1994 on the new DDM
10 Overview of Change for Mental Health?

11 A Some of the conference was manager --

12 Q Did you attend the conference on November 10th, 1994 on
13 Obsessive, Compulsive Disorders?

14 A Yes, I did.

15 Q Now, you've testified that Mr. Habkirk had the final
16 authority to say on these jobs that you applied for, isn't
17 that what you said?

18 MS. RAVITZ: I beg your pardon. I
19 think she is mischaracterizing the testimony.

20 MS. BERKERY: I can clear it up.

21 Q (By Ms. Berkery, continuing): Is it true that Donald Kern
22 was the executive director from 1980 to 1990?

23 A Yes.

24 Q Isn't it true that Mr. Kern would have had the final say on
25 jobs that you would have applied for prior to Mr. Habkirk

1 Q You are talking about Mr. Hibbard?

2 A Mr. Hibbard was the supervisor sometime after 1994, I
3 believe.

4 Q Well --

5 A Just before she got the job, Mr. Hibbard was the supervisor.

6 Q So that would be 1989 you have Mr. Hibbard's name here?

7 A Right.

8 Q Okay. So, sometime after 1998, 1995, when the grievances
9 were filed, you did get an evaluation, correct?

10 A Evaluations started about 1991, and the last one was
11 Mr. Hibbard who gave me was in 1994. They were good.

12 Q They were good. What about your evaluations, I believe you
13 testified to the evaluations you got from Miss Bielenin, to
14 be good evaluations?

15 A Most of them were.

16 Q This was after you filed the grievances in 1995, right?

17 A I know the last one I got from her was in 1985.

18 Q But she was your supervisor from 1986, correct?

19 A Yes, she stopped giving me evaluations toward the end.

20 Q Now, when you filed your grievances in 1987, I take it your
21 testimony would also be that you received good evaluations
22 from your supervisor after this, also, correct?

23 A I received good evaluations from Mr. Hibbard.

24 Q After 1987?

25 A Yes.

1 Q Now, I want to take you back to the incident with
2 Mr. Habkirk sometime in 1981?

3 A It was '80 or '81.

4 Q 1980 or '81. Now, after that time, I believe you went
5 through all the evaluations, the ones you got from
6 Mr. Slaine, they were pretty good evaluations, correct?

7 A Yes.

8 MS. RAVITZ: Your Honor, the
9 testimony is that they were good except for the ones for the
10 job.

11 Q (By Ms. Berkery, continuing): Other than the ones right
12 before the job you got good evaluations, correct? That was
13 after 1980 or 1981 when this incident allegedly occurred; is
14 that correct?

15 A That is correct.

16 Q Now, if I understand your testimony, you were coming out of
17 a staff meeting, right?

18 A That's correct.

19 Q Walking down the hallway, correct?

20 A That is correct.

21 Q Open hallway, is it? Public hallway?

22 A No, it is just the hallway.

23 Q It is the hallway with your co-workers that you were walking
24 with, correct?

25 A Yes.

- 1 Q And that Mr. Habkirk came up behind you and touched you and
2 you swung at him, correct?
- 3 A That is correct.
- 4 Q No words were spoken between the two of you, right?
- 5 A That is correct.
- 6 Q You remember anyone else being there?
- 7 A No.
- 8 Q You didn't report this to anyone, did you?
- 9 A No.
- 10 Q In fact, Mr. Habkirk did not snap your bra, did he?
- 11 A No.
- 12 Q Never did that, did he?
- 13 A I never -- all I remember --
- 14 Q Did he snap your bra is what I am asking you?
- 15 A No.
- 16 Q Okay. What woman's bra you claim you saw him snap, who is
17 that?
- 18 A Miora Sims.
- 19 Q That's where you saw him walking behind her in the hallway
20 and go -- they were walking up ahead of you and you saw him
21 do that?
- 22 A That is correct.
- 23 Q You know if Sims made any complaints about sexual
24 harassment?
- 25 A I don't believe so.

1 Q You ever discuss this with Mr. Habkirk in his capacity in
2 any way?

3 A No.

4 Q You never made any verbal or written complaints regarding
5 opposing sexual harassment; is that correct?

6 A That is correct.

7 Q Now, how long have you known Carmine Palmieri?

8 A When -- maybe since '85.

9 Q He used to work at Macomb County Community Mental Health,
10 didn't he? He doesn't work there anymore, right?

11 A No, he doesn't.

12 Q You attended his deposition, didn't you?

13 A Yes.

14 Q He is a personal friend of yours?

15 A Yes, he is.

16 Q He testified that you two attend the social meetings
17 together, and families get together a couple five times?

18 A I know for lunch, but rarely.

19 Q You see each other on a regular basis?

20 A Yes.

21 Q Isn't it true that Carmine Palmieri happens to be white,
22 right?

23 A Yes.

24 Q You know if he is a foreign national origin?

25 A He is Italian, what he tells me.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

SHARDA GARG,

Plaintiff,

-vs-

MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, a governmental
agency of MACOMB COUNTY, and
LIFE CONSULTATION CENTER, a
governmental agency and division
of MACOMB COUNTY COMMUNITY MENTAL
HEALTH SERVICES, Jointly and
Severally,

Defendants.

No. 95-3319 CK
Hon. Roland L. Olzark

JURY TRIAL

Proceedings had and testimony taken in the above
entitled matter before the HONORABLE ROLAND L. OLZARK -- Circuit
Judge, in the City of Mount Clemens, County of Macomb, State of
Michigan, on Wednesday, April 15, 1998.

APPEARANCES: ALLYN CAROL RAVITZ (P-19256)
Attorney at Law

CHARLEEN O'NEILL (P-47650)
Attorney at Law

Appearing on behalf of the Plaintiff:

KAREN B. BERKERY (P-38698)
Attorney at Law

Appearing on behalf of the Defendants:

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EXHIBITS

	<u>Marked</u>	<u>Admitted</u>
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1 THE COURT: Call your next witness,
2 please?

3 MS. RAVITZ: Call Sharda Garg for
4 the purpose of rebuttal.

5
6 (WHEREUPON THE WITNESS
7 WAS SWORN IN.)
8

9 S H A R D A G A R G,
10 a witness previously duly sworn testified on her oath
11 as follows:
12

13 REDIRECT EXAMINATION

14 BY MS. RAVITZ:

15 Q Mrs. Garg, did you hear Margaret Demery's testimony and Sue
16 Griggs testify that they offered you the opportunity to
17 discuss with them each time you didn't get a job that they
18 interviewed you for; is that correct?

19 A Yes.

20 Q Did Margaret Demery ask you to come and discuss your not
21 getting a job with her at any time?

22 A No.

23 Q If she had offered you the opportunity to discuss with her
24 as to why you didn't get a particular position, would you
25 have discussed it with her?

1 and there is no date on it. There is nothing to say this
2 was ever submitted to anyone; that it was never admitted
3 before.

4 THE COURT: Whose document is it?

5 MS. RAVITZ: It is mine.

6 THE COURT: I mean, whose -- this
7 is a letter or something?

8 MS. RAVITZ: Okay. I will show it
9 in the handwriting of my client, and it is the form.

10 THE COURT: Well, let me see it.

11 MS. RAVITZ: Okay.

12 MS. BERKERY: That number is 294?

13 MS. RAVITZ: Mr. Lewandowski
14 identified it as the form he had sent out to people to fill
15 out back then.

16 THE COURT: The objection is
17 because it is undated?

18 MS. BERKERY: Well, we have been
19 over this last time on direct. It is not admitted because
20 it was an undated form and she couldn't authenticate and
21 prove it. I don't know why we are rehashing it now. This
22 is something that has already been gone over.

23 MS. RAVITZ: Your Honor --

24 THE COURT: I don't have a specific
25 recollection. I think my notes indicate it was April the

1 2nd that it was initially discussed, but I didn't admit it
2 at that time.

3 I don't recall whether we were
4 holding on to it or why -- if she can identify it and give
5 us the information with relation to the testimony; it may or
6 may not be enough.

7 Okay.

8 THE COURT: It is undated.

9 Q (By Ms. Ravitz, continuing): Mrs. Garg, would you identify
10 Exhibit 295?

11 A This is a clinical psychologist credentialing document of
12 the Macomb County Community Mental Health, the form that was
13 sent to me with a letter from Dr. Lewandowski and it is
14 filled out.

15 Q Okay. Now, when you filled it out, did you make a copy of
16 it for yourself?

17 A Yes, I sent the original, and I kept a copy for myself.

18 Q And how did you send him the original?

19 A The original -- usually sent these forms by inter-office
20 mail.

21 Q That is how you sent this form?

22 A Yes.

23 Q Did Mr. Lewandowski ever come up to you and say where is
24 your form?

25 A No.

1 Q If he had asked you where is your form, you still have your
2 copy of that you can make a copy of?

3 A Yes, I still have a copy of it.

4 Q And did you ever reference in any correspondence that we
5 have already admitted as an exhibit that you had a copy of
6 the form?

7 A Yes.

8 Q I'd like to show you what's previously been introduced as
9 Defendants' Exhibit 235.

10 This was the three-page document
11 that Cheryl Haack testified to, that she took notes on.

12 A That's correct.

13 Q Remember her testimony?

14 A Yes, I do.

15 Q Mrs. Garg, in the course of your lifetime, have you ever had
16 to check off any form to indicate what your race is?

17 A Yes.

18 Q And what did you check off when people asked you on that
19 form?

20 A I am Caucasian.

21 Q Do you know how many races there are?

22 A Three.

23 Q What are the races?

24 A To my knowledge, it is Negroid, Mongoloid and Caucasian --
25 Caucasoid, which is Caucasian.

1 Q Have you ever referred to yourself at any time in your life
2 as non-Caucasian?

3 A I am a Caucasian by race. Why would I do that?

4 Q What is the answer, yes or no? Have you ever referred to
5 yourself as being non-Caucasian?

6 A No.

7 Q Now, during that -- do you know whether or not there was
8 some sort of meeting on April 22nd, 1987 prior to the time
9 you filed your discrimination grievance, was there some
10 meeting that took place regarding your grievance?

11 A Yes.

12 Q Okay. And were you asked to sign a form with respect to
13 that grievance?

14 A Yes.

15 Q And is this Page 3 of Defendants' Exhibit 235 the form that
16 you signed?

17 A Yes.

18 Q And were there other grievances at the meeting, the other
19 two grievances were whom?

20 A Karin Langmesser, Debbie Milhouse and myself.

21 Q And during the course of the meeting, did Debbie Milhouse
22 and Karin Langmesser speak?

23 A Karin, I remember, spoke up.

24 Q Okay. And did Debbie Milhouse speak up, if you recall?

25 A I don't remember.

1 Q Who talked more of the two of you, Karin Langmesser or
2 yourself?

3 A Karin was the talker.

4 Q Is there anything in these notes of the meeting that
5 reflects that Karin Langmesser said at any time at the
6 meeting --

7 MS. BERKERY: Your Honor, they can
8 speak for themselves. This person -- this witness is not
9 the person who prepared the notes. The notes have been
10 testified to by the person who authenticated that they were,
11 and the notes speak for themselves.

12 MS. RAVITZ: Your Honor, I believe
13 that the person testified that everything was resolved, so
14 there was no need for any taking notes and anyone else
15 talking.

16 MS. BERKERY: So?

17 Q (By Ms. Ravitz, continuing): Is there anything in here about
18 someone else talking?

19 A No. Not one of the grievance.

20 Q And I believe you testified on direct examination -- in case
21 you didn't, you didn't -- did you at any time prior to the
22 filing of the June 19th, 1987 grievance discuss any concerns
23 of yours about being discriminated against at any union
24 situation?

25 A No.

1 MS. RAVITZ: Your Honor, I would
2 like at this time to move for the admission of Exhibit 294.

3 MS. BERKERY: No objections.

4 THE COURT: All right. It may be
5 received.

6 Q (By Ms. Ravitz, continuing): Now, Mrs. Garg, did you hear
7 Joanna Bielenin's deposition testimony that someone was
8 given the job of -- the job over you because they had
9 experience with epilepsy clients?

10 A Yes.

11 Q You remember who this person was?

12 A Karin Langmesser.

13 Q Had you had experience with epilepsy clients?

14 A Yes.

15 Q From what point in time did you have experience with
16 epilepsy clients?

17 A Since the time I was hired in. I was doing both testing of
18 clients, developmentally disabled, included are retarded
19 people, people with epilepsy, cerebral palsy, so, I just
20 took clients.

21 MS. BERKERY: We went over this in
22 direct examination and testified to all of this on direct.

23 THE COURT: As I said, we are going
24 to avoid what we have already gone over.

25 MS. RAVITZ: I don't believe that

1 she testified that she was seeing them from the time that
2 she came in.

3 THE COURT: This is rebuttal
4 testimony?

5 MS. RAVITZ: That is correct.

6 THE COURT: To clear up what she
7 might have said or testified to on direct in the case in
8 chief.

9 MS. RAVITZ: I understand.

10 Q (By Ms. Ravitz, continuing): You heard Mr. Habkirk, Joanna
11 Bielenin, Demery, Kern, Courtney and Griggs and Slaine
12 testify that you didn't complain to them about
13 discrimination or retaliation when they interviewed you in
14 1983 through 1986; is that correct?

15 A That's correct.

16 Q Now, up until that point in time, you have testified you
17 hadn't filed a discrimination complaint, correct?

18 A That is correct.

19 Q Grievance. Okay. And you filed one in 1987, and you
20 testified where that went in terms of any investigation of
21 the decision of the agency, correct?

22 A That is correct.

23 MS. BERKERY: I am going to object.

24 It is leading on top of that, this is stuff that we have
25 gone into before on direct.

1 THE COURT: It is leading. I don't
2 seem to remember the other part.

3 MS. RAVITZ: These are foundational
4 questions.

5 THE COURT: I know you have got to
6 have foundational questions, let's get on with the rebuttal.

7 MS. RAVITZ: Okay. I am trying to,
8 your Honor.

9 THE COURT: I am trying to get you
10 there.

11 Q (By Ms. Ravitz, continuing): Did you ever, through any other
12 means, prior to the time that you wrote those letters to
13 Mr. Habkirk in 1994, ever fill out -- file another grievance
14 or complain to any of these people that interviewed you that
15 they were discriminating against you?

16 MS. BERKERY: Your Honor, I am
17 going to object. First of all, it is leading. Second of
18 all, the letter in 1994 doesn't mention the word grievance.

19 THE COURT: I understood the
20 testimony you are trying to get in rebuttal is the claim of
21 these various people that she had never complained to them
22 about this discrimination prior to January of 1987?

23 MS. RAVITZ: No.

24 THE COURT: It seems to me that is
25 a pretty simple question.

1 MS. RAVITZ: I know, but my
2 rebuttal --

3 THE COURT: That is what the gist
4 of the testimony has been and I was going to allow you to
5 get into, but there seems to be other areas you didn't show
6 me when I asked you to give me an outline where you were
7 going that is not here.

8 MS. RAVITZ: I am rebutting that
9 testimony.

10 THE COURT: What testimony?

11 MS. RAVITZ: I am going into why
12 she didn't.

13 THE COURT: You have got a simple
14 question.

15 MS. RAVITZ: Yes.

16 THE COURT: You have the testimony
17 of Mr. Habkirk complaining about discrimination prior to
18 June of 1987.

19 MS. RAVITZ: Right.

20 THE COURT: Did she answer yes, no,
21 what more do you need -- do we need than that. What is it
22 that you are concentrating on, whether or not she complained
23 to them about either of those items prior to June of 1987?

24 MS. RAVITZ: Your Honor, I am
25 offering this testimony -- the inference was made she

1 complained about it.

2 THE COURT: Now, ask her did she?

3 MS. RAVITZ: I am trying to get at
4 if she did or didn't.

5 THE COURT: Then let's get on with
6 this. We can handle this with simple questions of yes or
7 no. I don't think it takes a half hour to get there.

8 MS. RAVITZ: I am trying to.

9 Q (By Ms. Ravitz, continuing): Did you complain to them -- any
10 of these people that say you didn't complain to them about
11 discrimination? Did you ever complain directly to them
12 other than through your grievance and any letters that you
13 may have written?

14 MS. BERKERY: Your Honor --

15 THE COURT: Prior to June of 1987?
16 Is that what you are outlining?

17 MS. RAVITZ: Right. Then, later
18 on --

19 THE COURT: The answer should be
20 yes or no, and if not why not?

21 Q (By Ms. Ravitz, continuing): Did you?

22 A No, I did not.

23 Q Why didn't you complain to them about discrimination?

24 A Because they were -- there were jobs coming up and I didn't
25 want to jeopardize myself, you know, of the option of being

1 able to get a promotion, and I had before, which did not get
2 anyplace and I was basically trying to keep my mouth shut
3 about it.

4 Q Now, after 1987, there was testimony that you never
5 complained. You never complained to these people about
6 discrimination after you filed your discrimination
7 grievance.

8 Did you complain to them directly
9 about your being discriminated against?

10 A No.

11 Q And why not?

12 A Again, I had knowledge of denying my grievance, basically,
13 there was no national origin discrimination done by the
14 County, and I did not want to put myself in a position of
15 being harassed. I didn't want to file a grievance like
16 that.

17 Q Did you ever -- all these people, Mrs. Berkery asked about,
18 when did Sharda Garg file a grievance, did you ever know
19 about sexual harassment of Mr. Habkirk? Did she ever tell
20 you he had sexually harassed, did you ever tell these people
21 that Mr. Habkirk sexually harassed you?

22 A No.

23 Q Did Mr. Habkirk ever do anything to you after he approached
24 you and touched you and you elbowed him, did he ever do
25 anything to you again?

1 A No.

2 Q Okay. Anything that could be interpreted as sexual
3 harassment or anything sexually improper?

4 A No.

5 Q And so, did you ever, then, have any need to inform anyone
6 of Mr. Habkirk's sexual harassment of you or that particular
7 incident if it was sexual harassment or not?

8 A No.

9 Q Mrs. Garg, you heard Karen Berkery, the attorney for the
10 Defendants, ask you if you had told all of these people that
11 you had been retaliated against, did you hear her ask that?

12 A Yes.

13 Q Did there come a time -- well, did you ever file a grievance
14 for retaliation?

15 A No.

16 Q Did you ever make any complaints before you filed your
17 lawsuit about retaliation?

18 A No.

19 Q Okay. Did you know prior to when you filed your lawsuit
20 there was any special law in Michigan about retaliation?

21 A No.

22 Q When was the first time you found out that there was a law
23 that you could sue under a retaliation claim known as the
24 retaliation law?

25 A When I brought it up to you.

1 were going to be harassed; is that your testimony?

2 A I did not tell the supervisor that I was being discriminated
3 against.

4 Q Because you were afraid of being harassed?

5 A That is correct.

6 MS. RAVITZ: She is misstating the
7 testimony. She said because she was applying for jobs and
8 she had seen other grievances being handled.

9 MS. BERKERY: Your Honor, I believe
10 she testified, and maybe I will clear it up if I got the
11 wrong impression.

12 THE COURT: All right.

13 Q (By Ms. Berkery, continuing): Mrs. Garg, did you say the
14 reason -- one of at least the reasons why you didn't tell
15 people you thought you were being discriminated against all
16 these years because you were afraid of being harassed?

17 A That is correct, one of the things I said.

18 Q Isn't it true after you filed your 1985 grievance and
19 subsequent to that time after you filed the 1987 grievance,
20 you got good evaluations?

21 A There were no evaluations from 1986 to 1997 until Teri
22 Hibbard came in as a supervisor.

23 Q Did you get a good evaluation after 1987 from Mr. Hibbard, I
24 think we all heard about that?

25 A Yes, I did.

1 Q Is it also true that you would call Mr. Slaine on a regular
2 basis, approximately once a week and talk to him about
3 personal issues?

4 A Yes.

5 Q Did you at that time -- you were afraid that he was going to
6 harass you?

7 A I don't understand the question.

8 Q Did you have a fear that Mr. Slaine was going to harass you?

9 A Not Mr. Slaine.

10 Q Okay. But you also didn't say anything to him about it all
11 these years, correct?

12 A I don't remember if I discussed it with him or not.

13 Q If you did, you can't recall right now?

14 A I cannot tell you for certain.

15 Q Isn't it true that you testified that Mr. Miller, who was
16 your supervisor in 1995, that personally you got along with
17 him well?

18 MS. RAVITZ: Your Honor, I am going
19 to object. She is going beyond in her recross examination
20 what I covered in my redirect.

21 MS. BERKERY: Goes to this claim of
22 harassment.

23 MS. RAVITZ: Your Honor, she --

24 THE COURT: Who is the person?

25 MS. BERKERY: Mr. Miller, he was

1 the supervisor.

2 MS. RAVITZ: He wasn't the
3 supervisor that she was testifying about.

4 THE COURT: Anything she went into
5 to rebut, I don't remember anything about Mr. Miller.

6 MS. RAVITZ: Wasn't --

7 MS. BERKERY: If I could lead into
8 something that she testified afraid of being harassed.

9 MS. RAVITZ: She was talking about
10 specific people that we had mentioned, Mr. Miller.

11 THE COURT: Well, all right, if she
12 gave a reason why she was fearful of being harassed, she can
13 bring out evidence to show why it was or was not the reason
14 she was fearful. All right. Go ahead.

15 Q (By Ms. Berkery, continuing): Isn't it true that you
16 testified on direct examination that you got along well on a
17 personal level with Mr. Miller?

18 A Initially, I did, yes.

19 Q And isn't it also true that you felt that you -- that he
20 criticized your work performance, and sent a memoranda
21 regarding your work performance?

22 A Yes, he sent a memoranda.

23 Q They were about your work performance, is that true?

24 A In the memoranda form, yes.

25 Q You testified just now that Margaret Demery is a nice

1

the supervisor directly over him?

2

A Keith Hoffman.

3

Q And I believe you testified earlier today as to your relationship with Mr. Hoffman or lack thereof?

4

A Yes.

5

Q Mrs. Garg, during your course of employment at LCC and after you had moved to First North, did you ever apply for jobs outside of the agency?

6

A Yes.

7

Q Can you indicate how many jobs you applied for when you applied for them somewhere else?

8

A All the LCC personnel --

9

Q Jobs that you applied for outside of Macomb County Community Mental Health?

10

A Oh. About maybe eight or nine.

11

Q Is there a document that you have that would refresh your memory as to how many?

12

A Yes.

13

MS. BERKERY: Is this being used to refresh her memory?

14

15

MS. RAVITZ: Yes.

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MS. BERKERY: Who prepared the document? It has been typed up. This is not prepared by the Plaintiff. I have no evidence of that.

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THE COURT: Are there notes?

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Q Okay. And you testified to what your relationship was like?
Now, with respect to Mrs. Falasa?

A Yes.

Q Now, when you came to LCC, and you were under the III -- Tom
Miller, what was your relationship with him?

A A personal level or professional level?

Q Well, why don't you describe both?

A Personally, I thought he was okay, but professionally, I was
continuously harassed by him.

Q And in what way were you harassed by him?

A He was writing memos to me which were like one page, two
pages long. I had to respond basically asking to change
things. The things he would ask me, would take me from what
my job duties were. It was like I would come into the
office, and I started dreading looking into my mailbox. I
would find a stack of memos in my box.

Q Were they positive memos about your performance?

A No.

Q What kind of memos were they?

A They were always criticisms on my work.

Q And what was the most amount of memos you got in any one
given day?

A I got four memos at one time.

Q Now, did you feel that you had to respond to these memos?

A Yes.

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Q Did you respond to these memos to him?

A Yes. He would write the memos -- County time -- had a computer at his desk, at his disposal and he had the whole day at his disposal and writing these memos. I have to go home and spend my entire evening sometimes a whole week responding to them.

MS. BERKERY: Your Honor, I object.

There is no evidence that Mr. Miller was typing these at work or spending all this time at work writing the memos. There's no foundation for these questions.

I would object to the speculative nature and the hearsay nature of them.

Q (By Ms. Ravitz, continuing): Did you ever see him preparing these memos?

A Yes, he would tell me.

Q What would he say?

A I am writing another memo to you.

Q Did you offer any conversations with him about why he was writing you all these memos rather than just talking to you?

A On several occasions I would mention it and the answer was, this is the way we do things, and one time when I asked him he said if I don't write you up, I am going to get written up, I am going to write you up.

Q Did you consider this part of your duties?

A Yes.